

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Mr and Mrs Pritchard

Appellant's Address: The Dillwyn Arms, Herbert Street, Pontardawe, Swansea, SA8 4EB

Appeal number: 693030545320/192N17/26

The Matter Appealed against: 2017 Rating List appeal

Date of Hearing: 15th November 2018

Appearances: Mr Pritchard
Mr A Morse (for respondent Valuation Officer)

Date of Decision: 7th December 2018

Decision of Tribunal: Allowed

Members of the Tribunal: Mr K Leighfield (Chairperson), Mrs C Green & Mr J Griffiths

Tribunal Clerk: Mr J Evans

Reason for Decision

1. In their proposal, dated 16th February 2018, the appellant ratepayers, Mr and Mrs Pritchard sought a reduction to an entry in the 2017 Rating List in relation to the Dillwyn Arms. In her proposal, Mrs Pritchard sought a reduction in the compiled list level of value of Rateable Value (RV) £27,750 to RV £10,000 with effect from 1st April 2017.
2. Since the appellant had lodged the proposal electronically, the date the VO received it was 16th February 2018. However, since the VO did not agree to alter the list to the extent the appellant had sought in the proposal, he remitted the appeal to the Valuation Tribunal for Wales.
3. 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.

Summary of the Case

4. The appeal property was a family run enterprise situated in Pontardawe, Swansea. It appeared as an entry in the rating list as a public house and premises. In terms of its amenities, the property comprised a public bar, a restaurant and commercial kitchen on the ground floor and six letting rooms situated on the first floor. Outside the property incorporated a car park and beer garden.
5. Mr Pritchard said that the appeal property was the oldest public house in Pontardawe. Mr and Mrs Pritchard acquired the lease of the premises in December 2017 at a rent of £15,000 per annum. However, the landlord reduced the rent to £10,000 per annum but this could increase subject to a review of circumstances.
6. Mr Pritchard explained that trading conditions were difficult in Pontardawe and referred to the number of restaurants, fast food outlets and public houses situated relatively nearby. Mr Pritchard drew attention to the problems associated with competition from multi-national companies and referred to their purchasing power; one such company traded from two sites at *Pontardawe Inn* and *Tick Tock*. He referred to the RV's and turnover of competing venues situated nearby with similar capability whose marketing strengths, in some cases, exceeded the offer he could presently provide at the subject property. Mr Pritchard explained that Mr Morse had been unaware that the Pontardawe Inn was a Marsdens owned property.
7. Mr Pritchard said that whilst competition with other traders in the town was intense, he also pointed out that many of them had RVs below a level the Valuation Officer had attributed to his property. He pointed out that three other entrepreneurs had taken the pub over the past two years but had failed. As a result the pub had been "boarded up" prior to Mr Pritchard's occupancy.
8. With regard to the business capability of the appeal property, Mr Pritchard said the property had a small bar area that could accommodate approximately 30 people, a restaurant for 46 seats and six rooms of accommodation was provided on the property's first floor.
9. Mr Pritchard also referred to a relatively recent initiative created by the Pontardawe Arts Centre called "Pop up Ponty". This was an initiative that enabled traders based outside Pontardawe an opportunity to sell food and beverages from outside the arts centre as well as provide live music. He said that his pub was empty each Friday when Pop Up Ponty was being run.
10. Mr Pritchard also pointed out that some of his competitors benefited for Small Business Rate Relief because their RV's were below the qualifying threshold of RV £12,000. He said that relief or partial relief from rates strengthened the position of competing properties and, since he did not

enjoy any rate relief, further impeded his ability to effectively trade from the premises.

11. With regard to Mr Morse's valuation of the appeal property, Mr Pritchard recognised that his business was relatively new and accepted that the scarcity of reliable information made the valuation exercise difficult. However, he did not agree with projections of trade that Mr Morse had relied on to estimate fair maintainable trade which subsequently underpinned the Rateable Value for the subject property. Mr Pritchard did not envisage a situation that would see his future takings double in the subsequent years of business.
12. Mr Pritchard submitted an income projection for the Dillwyn Arms that his accountant had prepared in advance of the hearing. It was set out as follows –

		Bar	Restaurant	Hotel	Total
Dec 17 -	Aug 18 (ACT)	29709.88	36388.00	29658.70	
Sept 18 -	Nov 18 (EST)	<u>4901.80</u>	<u>4116.00</u>	<u>1892.49</u>	
Year	2017/18	34611.68	40504.00	31551.19	
Year 18/19					
Based on	15% increase	39803.43	46579.60	36283.87	122666.90
Year 18/19					
Based on	10% increase	43783.77	51237.56	39912.26	134933.59
Year 18/19					
Based on	10% increase	48162.15	56361.32	43903.48	148427

13. Mr Pritchard explained that in drawing up his income projection he had taken account of his existing clientele from the local area and factored a small amount of seasonal trade from outside of the area. He believed that a growth margin of 15% for the first year was possible followed by growth of 10% in subsequent years provided the construction of new homes earmarked for the area came to fruition.
14. In response to questions, Mr Pritchard confirmed that Pop up Ponty had been going for about four months. He also said that a number of businesses had relocated to be closer to the art centre.
15. Mr Pritchard said that he was not aware of the level of RV the Valuation Officer had attributed to the subject property before he acquired it. He said that prior to his acquisition of the Dillwyn Arms he had been involved with another enterprise in Pontardawe. He added that Pontardawe was an area he had grown up in and knew well. Before taking on the subject

property he had received advice from other local entrepreneurs who told him that the Dillwyn Arms would be cheap to run.

16. Mr Pritchard confirmed that the premises had car parking for six guests. However, this might come at the expense of other customers who might decide to bring their cars. Alternatively, other paying car parks were available nearby.
17. In view of the foregoing, Mr Pritchard sought a reduction in RV to £10,000 with effect from 1st April 2017.
18. In support of his contention for a reduction in the existing RV of £27,750 to RV £14,500 with effect from 1st April 2017, Mr Morse presented his submission to the Tribunal. In so doing he explained that he would deploy a dual role as advocate and expert witness.
19. Mr Morse explained that Mr Pritchard's proposal to alter the list had highlighted an anomaly in the rateable value that the Valuation Officer had attributed to the appeal property. Upon reflection, he offered a reduction in RV to £14,500 with effect from 1st April 2017.
20. In his case, Mr Morse referred to the valuation history of the subject property. Mr Morse also referred to a guidance note which explained how licensed properties had been valued for the purposes of the 2017 Rating Revaluation.
21. To support his revised valuation of the subject property, Mr Morse referred to the valuations and adopted levels of FMT in respect of other public houses in Pontardawe, namely the "Castle Hotel", the "Dynevor Arms", "Kitty O'Sheas", "Ivy Bush Hotel", "The Other Place", "The Pink Geranium", "The Pontardawe Inn" and "Gwyn Arms". Mr Morse confirmed that the most comparable property to the appeal property was the Castle Hotel.
22. Mr Morse pointed out the absence of trade information on the appeal property was a significant point of difference because trade or turnover figures on more established properties was more readily available. However, whilst he accepted that RV £27,750 was excessive, he believed that a valuation in value to RV £14,500 based on Fair Maintainable Trade (FMT) figures of £75,000 per annum in respect of accommodation, dry and wet trade was more appropriate.
23. In arriving at his valuation, Mr Morse explained that an assessment of rental percentages and turnover figures helped derive the valuation of the appeal property. Under normal circumstances, the receipts represented the annual trade that was deemed maintainable (or FMT) at 1st April 2015 (The Antecedent Valuation Date) by a competent tenant. In addition, he had to have regard to the property's physical characteristics such as its nature and location at the Material Day (1st April 2017).

24. Mr Morse explained that the object of this valuation exercise was to determine the longer term FMT for the premises. He said this was complicated by the fact that previous tenancies had failed and the premises had experienced vacant periods. With this in mind he asked the Tribunal to be wary of the actual trade achieved in the first 12 months.
25. In view of the foregoing, Mr Morse asked the Tribunal to confirm RV £14,500 with effect from 1st April 2017.
26. At the conclusion of the hearing, the Tribunal decided to reserve its decision.

Decision of the Tribunal

27. Having considered all of the evidence placed before it, the Tribunal decided as follows –
28. When arriving at its decision, the Tribunal was mindful of the rating legislation laid down by Parliament. Schedule 6 of The Local Government Finance Act 1988, as amended by section 1(2) of the Rating (Valuation) Act 1999 defined rateable value of a non-domestic property as taken to be the amount equal to the rent at which it was estimated the property might reasonably be expected to let on a year to year basis on 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 state to command the rent mentioned above.
29. The valuation date (AVD) was set by the Rating Lists (Valuation Date) (Wales) Order 2014 –
 - 1st April 2015 is specified as the day by reference to which the rateable values of non-domestic hereditaments are to be determined for the purposes of local and central non-domestic rating lists which are compiled for Wales on 1st April 2017.
30. Under the terms of the rating hypothesis, the Tribunal had regard to a hypothetical situation where a property was vacant and available to let on the market at the antecedent valuation date (AVD) of 1 April 2015 and took

into account of economic factors and the state of the property market at that time. However, physical matters of the property and its locality had to be taken as they were on the material day. In this case the material day was 1st April 2017.

31. The Tribunal noted that part of Mr Pritchard's justification for a reduction in his properties' RV was based on the fact that the level of RV attributed to other competitors qualified them for rate relief. The purpose of this exercise was not to establish whether the level of the appeal property's RV could feasibly fall below the qualifying threshold for rate relief but to determine whether Mr Pritchard had adequately discharged the burden of proof necessary to undermine Mr Morse' revised valuation of the subject property.
32. According to the "Valuation of Public Houses Approved Guide", the assessment of FMT was subject to the consideration of the actual trade undertaken by the property. As in all rating cases, the Tribunal understood that the property had to be viewed 'vacant and to let' and in rating appeals that concerned licensed property, case law had expounded its view that the hypothetical tenant would contemplate what trade an ordinary tenant might expect to achieve if he were the licensee in the premises. Whilst the Tribunal recognised that previous business ventures at the Dillwyn Arms had failed, the Tribunal was not persuaded that there was something in the fabric of the building that encouraged failure. There was simply no evidence before it to help it come to understand how such failure had come to pass. Consequently, in the case before it, the Tribunal recognised that the prospective tenant, as must Mr and Mrs Pritchard, would have contemplated whether he might be more or less successful than his predecessor. In his conclusion, the level of trade the previous tenant had achieved would occupy, to a greater or lesser extent, the thoughts of the prospective tenant.
33. For the reasons highlighted by Mr Morse, the Tribunal was unable to rely on the actual trade undertaken at the premises since Mr and Mrs Pritchard took up the tenancy of the premises. However, having had regard to all of the evidence placed before it, the Tribunal considered that the estimate of FMT adopted by Mr Morse in his valuation of the subject property appeared excessive when it was compared against the trade achieved by competing businesses situated nearby.
34. In view of this, the Tribunal did not think that the evidence supported the level of FMT Mr Morse had proposed which helped him arrive at an RV £14,4500. The Tribunal accepted that trade would improve as Mr and Mrs Pritchard's business bedded down but it did not consider that the prospective tenant would estimate the FMT totalling £225,000 in respect of dry and wet turnover as well as that attributed to accommodation for a public house in that location. In arriving at its decision, the Tribunal was influenced by the analysis of trade at the Castle Inn (FMT £150,000) which resulted in RV £11,500.

35. The Tribunal also considered that a small bar such as the one at the Dillwyn would affect the prospective tenant's vision of wet trade. Whilst the hypothetical tenant might be more encouraged by food and accommodation receipts, the Tribunal agreed with Mr Pritchard's assessment that £75,000 for each of those headings required downwards adjustment.
36. In view of the foregoing, and bearing in mind Mr Pritchard's income projection which, in this case, the Tribunal preferred, considered that the levels of FMT should be revised as follows -

Receipts	Adopted FMT	Rental %		RV
Wet	£50,000	5.69		£2,845
Dry	£60,000	5.25		£3,150
Accommodation	£50,000	9.00		£4,500
			Total	£10,495
			RV	£10,400

37. The decision therefore decided – RV £10,400 with effect from 1st April 2017. In view of the foregoing, the Tribunal decided to allow the appeal and orders the Valuation Officer to amend the Rating List accordingly.

Certified a true copy on 7th December 2018