

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Dr Clare Hedwat

Appeal property: Ty Mor, The Esplanade, Criccieth, LL52 0HZ

Appeal number: 681036415981/537NV17

The Matter Appealed against: 2017 Non-Domestic Rating List

Date of Hearing: 9 November 2023

Appearances: Dr Hedwat & Ms R Morris (for the respondent Valuation Officer)

Date of Decision: 14 January 2024

Decision of Tribunal: Appeal Dismissed

Members of the Tribunal: Mrs J Worswick (Chairperson), Mr R Handy & Mr C Newman

Tribunal Clerk: Mrs C Jones

Legislation

Paragraph 2(1) Schedule 6 Local Government Finance Act 1988
The Rating Lists (Valuation Date) (Wales) Order 2014 SI No 2014/1370 W139
S66(2BB) Local Government Finance Act 1988

Summary of the Case

1. 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.
2. The appeal arose from a proposal received by the Valuation Officer (VO) on 21 December 2022. The appellant was challenging the effective date of the alteration made by the VO on 9 September 2022, to enter the appeal property into the 2017 Non-Domestic Rating List. Dr Hedwat believed the effective date was inaccurate and should be altered to 22 April 2022, the date the property became available to let.
3. The appeal property was a newbuild (2022) three-bedroom purpose-built self-catering unit on the esplanade in Criccieth. It had a Rateable Value of £4,200 which was in line with similar size and standard properties locally, but this was not contested by the appellant.

Decision of the Tribunal

4. Having regard to relevant legislation and all the written and oral evidence provided, the Tribunal decided as follows.
5. The only issue before it was whether the Valuation Officer was correct in her assertion to enter Ty Mor into the 2017 Non-Domestic Rating List with effect from the 9 September 2022.
6. Dr Hedwat's main contentions were that a planning covenant was in place on the appeal property stating it could not be used as a residential property but only as a holiday unit.
7. She believed the property should never have been listed as a domestic property, as the legislation stated a property was not domestic if it was wholly or mainly used as a business for the provision of a short stay accommodation. The appeal property was provided for short periods to individuals whose sole or main residence was elsewhere, and it was not self-contained self-catering accommodation provided for commercial benefits.
8. Dr Hedwat also believed the business rates should start from the date the holiday let became available, which was the day the building regulations were passed.
9. Ms Morris explained to the Tribunal that the subject property was brought into Non-Domestic rates on the 9 September 2022 as this was the date at which the criteria for the 1988 Local Government Finance Act (LGFA) legislation had been met.
10. Ms Morris having reviewed the letting data for the appeal property confirmed that the property was available for let (short periods) for 140 days and had been let for 70 days since it first became available to let on the 22 April 2022. She stated that this was not contested by the appellant.
11. She also clarified that on the 22 April 2022 the property had not been available to let for 140 days. The earliest possible date in which the criteria could be met was 9 September 2022, as this was 140 days from the 22 April 2022. This was on the assumption the other criteria set out within the 1988 LGFA had been met.
12. Without any reference to planning consent within this legislation, Ms Morris stated she was unable to consider the contentions set out by the appellant and was bound by the legislation set out in Section 66(2BB) of LGFA 1988.
13. In respect of the subject appeal, the Tribunal was mindful the persuasive or legal burden of proof rested with the appellant, who needed to show the

2017 Non-Domestic Rating List was wrong and not for the VO to prove otherwise.

14. The Tribunal having reviewed Section 66 (2BB), pre 2023 amendments, was of the opinion it was resolute in its wording and specified that for the appeal property to be valued as a self-catering unit and be entered in the Non-Domestic Rating List, each of the following three rules must be met and continue to be met regardless of circumstances, namely:
 - be available to let for short periods for at least 140 days or more over the current and previous tax years; and
 - be actually let for at least 70 days in the past 12 months; and
 - be let on a commercial and on a short-term basis.
15. Whilst the Tribunal empathised with the appellant regarding her contentions, it was bound by the same legislation as the Valuation Officer and was unable to diverge from it. Consequently, the panel had no option other than to conclude that based upon the weight of evidence presented, the Valuation Officer was correct in her decision to enter the appeal property in the 2017 Non-Domestic Rating List with effect from the 9 September 2022. In view of the foregoing, the Tribunal decided to dismiss the appeal.