

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Ms G Dempsey

Appeal property: annexe At Broadawel, Cyngordy, Llandover, SA20 0LS

Appeal number: 682836307723/285NV17/65

The Matter Appealed against: Non-Domestic Rating Appeal

Date of Hearing: 23rd January 2024

Appearances: Mrs R Morris (for respondent Valuation Officer)

Date of Decision: 15th February 2024

Decision of Tribunal: Dismissed

Members of the Tribunal: Mr J Bowen (Chairperson), Mr A E Sangster & Mr D G Ryan

Tribunal Clerk: Mr J Evans

Introduction

1. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the evidence presented was fully considered by the tribunal before coming to its decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as being overlooked.
2. This appeal comes to the Tribunal as a result of a proposal which the appellant ratepayer, Ms Gill Dempsey made in response to a Valuation Officer's Notice to reinstate her property as an entry in the 2017 Non-Domestic Rating List (List). The appeal property is known as "The Annexe at Brodawel", Cyngordy, Llandover, Carmarthenshire. The appeal property is situated in an extremely rural location. The nearest shop is some six miles away.
3. The Respondent Valuation Officer (VO) received the proposal on 1st November 2022. In making her proposal, Ms Dempsey contended that the appeal property should not have been deleted from the List with effect from 1st April 2020, and sought its restitution.
4. In her detailed reasons for making the proposal, Ms Dempsey stated –

"In complying with the government's holiday accommodation Covid lockdown rules within Wales during certain months of 2020 to 2021, the property was forced to close and subsequently had many bookings cancelled. It therefore was no possible to be let for more than the 70 days required. As this was beyond my control, I consider it should have remained on the non-domestic rating list for the period 1st April 2020 to 31st March 2021."
5. Ms Dempsey had submitted a written submission which amplified the matters contained within her proposal. In addition to a written statement, her evidence

also included Seren Loft Bookings for the years 2019 – 2020, 2020 – 2021 and 2022 -23. These documents were placed before the Tribunal at the hearing.

6. Mrs Morris represented the respondent Valuation Officer in these proceedings. She is a member of the Royal Institute of Chartered Surveyors, is currently employed by the VO and had 15 years' experience as a commercial valuer in both the private and public sector.
7. Ms Dempsey had completed a form of return document the VO had sent her, from which they understood that only 43 nights of lettings had been completed for the year 2020 to 2021. In light of this the VO maintained that the statutory criteria under S.66 (2BB) had not been met and deleted it from the List with effect from 1st April 2020.

Legislation

8. Paragraph 2(1) of the Local Government Finance 1988, as amended, provided the statutory definition of Rateable Value under which a valuation for rating purposes is done. It states –

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.

9. The definition of “Domestic Property” is provided for by Section 66 of the Act. It stated –

(1) Subject to subsections (2), (2B), (2BB) and 2E below, property is domestic if—

(a)it is used wholly for the purposes of living accommodation,

(b)it is a yard, garden, outhouse or other appurtenance belonging to or enjoyed with property falling within paragraph (a) above,

(c)it is a private garage which either has a floor area of 25 square metres or less or is used wholly or mainly for the accommodation of a private motor vehicle, or

(d)it is private storage premises used wholly or mainly for the storage of articles of domestic use.

10. In order that it remain as an entry in the List, a hereditament such as the subject property must satisfy criteria set out by Section 66 (2BB) of the Act. This stated –

A building or self-contained part of a building is not domestic property if each of the following paragraphs apply in relation to it—

(a) the relevant person intends that, in the year beginning with the end of the day in relation to which the question is being considered, the whole of the building or self-contained part will be available for letting commercially, as self-catering accommodation, for short periods totalling 140 days or more;

(b) on that day the relevant person's interest in the building or part is such as to enable the person to let it for such periods;

(c) the whole of the building or self-contained part of the building was available for letting commercially, as self-catering accommodation, for short periods totalling 140 days or more in the year prior to the year beginning with end of the day in relation to which the question referred to in paragraph (a) is being considered;

(d) the short periods for which it was so let—

(i) amounted in total to at least 70 days; or

(ii) taken together with the short periods for which one or more other buildings or self-contained parts of a building so let, amounted to an average of at least 70 days for each building or self-contained part of a building included within the calculation; where each building or self-contained part of the building included in the calculation—

(aa) is not included in another calculation under this sub-paragraph for the year in relation to which the question is being considered,

(bb) is situated at the same location or in very close proximity to all of the other buildings or self-contained parts of a building included in the calculation, and

(cc) is so let as part of the same business or connected businesses.

11. Paragraph 5, S.67 of the Act states –

For the purpose of deciding the extent (if any) to which a hereditament consists of domestic property on a particular day, or is a Crown hereditament on a particular day, or is exempt from local non-domestic rating on a particular day, the state of affairs existing immediately before the day ends shall be treated as having existed throughout the day.

Summary of the Case

12. Since moving to Brodawel in 2017, Ms Dempsey had enjoyed a healthy increase in her bookings year on year and those which were received for the year 2020 were expected to have exceeded those made in the previous year. Seren Loft was available and open for bookings for 150 days during the 2020 - 21 Covid year (365 days for Key Workers). The property is currently rated as "Exceptional 9.8" on Booking.com and awarded 5 stars by AirBnb.
13. In her appeal, Ms Dempsey points to the impact the Covid pandemic had on her business as well as to others within her industry and draws attention to the domino effect it had to major events such as the Royal Welsh Show, Man v

Horse, car rallies, Bog Snorkelling, as well as many others, which were cancelled. She faced considerable difficulties trying to attract new customers without the added lure of these well-known and popular events. Moreover, the property's remoteness in rural Wales did not make it an attractive proposition for key workers during the lockdown phases and points out that she only secured one booking for a Key Worker during that time.

14. Throughout that time, and in order to stimulate confidence and ensure safety for her guests, Ms Dempsey complied fully with recommendations suggested by booking platforms. These recommendations included surrounding each booking with a blocked day to allow thorough deep cleaning of the property. By doing this, she had secured a significant increase in her workload, turnaround time, as well as costs for PPE equipment and cleaning costs. The VO's decision to remove her property from the Rating List and install it as an entry in the Council Tax List had only served to exacerbate an already challenging financial period.
15. Ms Dempsey had secured 43 days of lettings for the year in question and 91 days were cancelled. She contended that as 48 days of bookings were cancelled as a result of the government enforcing the closure of self-catering properties, she hoped that the VO would have reflected this in their 70 day letting calculation.
16. Mrs Morris now accepts that the appeal property had been incorrectly removed from the List on 1st April 2020. Having re-evaluated the letting information provided by Ms Dempsey, the decision now pursued at this hearing was that the Tribunal reinstate the property into the Rating List and then remove it with effect from 21st November 2020 where it will be placed in the Council Tax List. She makes use of Regulation 34 (6) of the Non-Domestic Rating (Alteration of Lists and Appeals) (Wales) Regulations 2005. This regulation stated –

(6) Where it appears that circumstances giving rise to an alteration ordered by a valuation tribunal have at the date of the decision ceased to exist, the order may require the alteration to be made in respect of such period as appears to the tribunal to be commensurate with the duration of those circumstances.
17. Mrs Morris maintained that there was no valuation under appeal, since it was common ground between the parties that the property had been incorrectly removed from the List.
18. Mrs Morris explained the approach the VO had taken with regard to its application of S.66 (2BB) to self-catering properties. She said that where a property did not meet the criteria and a ratepayer had declared this, the property was deleted at the start of the year. The property would then be re-entered in the non-domestic rating list with effect from 1st April 2021. There will be a date on which the property has been commercially available for 140 days, and a date on which it has been let for 70 days in the previous 12 months. Providing it will continue to be commercially available for 140 days in the following 12 months, the date in which the property can move to the Non-Domestic Rating List will be form the later of these two dates. If the criteria as set out in section 66 (2BB) is not met, the property will remain banded for Council Tax.
19. Having examined the letting information, Mrs Morris has concluded that the correct effective date of movement out of the List was 21st November 2020, because this was the day on which the property failed to meet all three statutory tests. She explained that the property next met the criteria on 7th June 2021 and should be deleted from the Council Tax List and reinstalled into the List from that

date. However, the latter point falls outside the scope of this proposal and it is Mrs Morris' intention to alter the List by way of a Valuation Officer's Notice.

20. However, for the purposes of the matter presently before the Tribunal, Mrs Morris accepted that the property should not have been deleted with effect from 1st April 2020.
21. There was no dispute between the parties in relation to the number of nights the property had been let for in the three trading years of 2019 – 2021. The number of nights booked for these periods was 92, 125 and 43, respectively. However, despite the various periods of lockdown the Welsh Government had imposed, Mrs Morris considered that only 43 lets had been concluded for the period 2020 – 2021. As this fell short of the required 70 days of letting, the property could not remain an entry in the Rating List until it did.
22. In cases of this nature, the VO considered the circumstances immediately before midnight to establish whether a property was let on a certain day. This approach aligned with the legislation for Non-Domestic Rating (business rates), where the circumstances '*immediately before the day ends*' are considered. During periods of National Lockdown, self-catering accommodation were not able to accept guests, unless permission from the Local Authority was received. In this case, it was understood that Ms Dempsey was able to accommodate a key worker during this time.
23. In her conclusion, Mrs Morris now accepts that the property's letting information suggests that the statutory criteria of S.66 (2BB) had been met as at 1st April 2020. She asked that the Tribunal reinstates the property into the List as the appellant had contended for but only to 21st November 2020. She also draws attention to the fact that the List will require a further alteration with effect from 7th June 2021, but that this falls outside of the scope of the proposal which gives rise to this appeal.
24. At the conclusion of the hearing, the tribunal decided to reserve its decision.

Decision of the Tribunal

25. Having considered all the evidence that was placed before it, the Tribunal decided to allow the appeal, but only in that the property should be reinstated into the List with effect from 1st April 2020 and that it should be deleted on 21st November 2020 when the statutory criteria was no longer met.
26. The Tribunal had considerable sympathy for Ms Dempsey in view of the problems the COVID pandemic brought about to her property and to a myriad of other businesses in her vicinity. However, the Tribunal is unable to take account of cancelled bookings that might otherwise have been included in the 70 days but for the pandemic, even though the closure of businesses and restriction of movement was brought about by Welsh Government legislation.
27. It is this fact that makes the decision the Tribunal must make a difficult one. In its examination of the legislation, it recognised that the VO could only undertake an assessment of the facts and apply the rules that apply under S.66 (2BB) despite the severity of the wider circumstances that were prevalent at the time. By the same token, the statutory scheme does not allow the Tribunal any discretion or wider power to vary or amend the legislation that governs the administration of these rules.

28. The Tribunal's decision is restricted by the scope of Ms Dempsey's proposal. In view of the foregoing, the Tribunal allows the appeal but only to the extent conceded for by Mrs Morris in her case. The Tribunal orders that the subject property is entered in the Rating List at a Rateable Value of £1700 between 1 April 2020 and 21st November 2020.