

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Ms Eliza Tyrrell

Appeal Property: Bryn Ffynnon, Sarn Road, Rhiw, Pwllheli LL53 8AD

Appeal Number: 681034792815/285NV17/48

The Matter Appealed Against: 2017 Non-Domestic Rating List

Date of Hearing: Wednesday 31st January 2024

Appearances: Ms Eliza Tyrrell & Mrs R Morris for the Valuation Officer (VO)

Date of Decision: 24 March 2024

Decision of Tribunal: Appeal Dismissed

Members of the Tribunal: Mr D Rh Prytherch (Chairperson), Mr G E Evans & Mr J H Owens

Tribunal Clerk: Mrs C Jones assisted by Mr D Owen & Mr R T Williams

Legislation

Paragraph 2(1) Schedule 6 Local Government Finance Act 1988, as amended.

S66(2BB) Local Government Finance Act 1988, as amended.

Paragraph 5 S67 Local Government Finance Act 1988, as amended.

The Rating Lists (Valuation Date) (Wales) Order 2014 SI No 2014/1370 W139

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 10 November 2020. Ms Tyrrell was challenging the effective date of the alteration made by the VO on 3 October 2020, to enter the appeal property into the 2017 Non-Domestic Rating List. She believed the effective date was inaccurate and should be altered to 28 June 2020, due to having evidence of bookings that proved she had achieved the 140/70 days threshold by this date.
3. The Clerk reported that Ms Tyrrell had requested a postponement of her appeal on the 5 January 2024, to have fair and reasonable time to prepare her case. As Mrs Morris was not willing to agree to the request it was put before the Tribunal as an adjournment request. Having heard

representations from both parties and bearing in mind that the appeal had already been postponed twice previously, the Tribunal believed there was enough evidence in front of them to proceed with the hearing. Therefore, the parties were asked to present their cases.

4. The appeal property was a self-catering holiday unit and premises situated near the village of Rhiw on the southwest tip of the Llŷn Peninsula. The grounds of the cottage border National Trust land which leads to the nearest beach. It comprised of 6 single bed spaces within 3 bedrooms and was entered into the compiled 2017 Rating List at a Rateable Value of £3,600 with effect from 3 October 2020. The Rateable Value of the appeal property was not in contention, it was the effective date that the parties disagreed upon.
5. Ms Tyrrell had purchased the appeal property in October 2019 with the sole purpose of running it as a commercial business. She had invested heavily in the property and had been under significant pressure to establish the new business and hit the criteria to be entered into the 2017 Non-Domestic Rating List. At the same time, she had also been dealing with stressful personal matters which she expanded on fully at the hearing.
6. Moreover, the COVID-19 pandemic had hit the UK in March 2020 and consequently Ms Tyrrell had struggled to establish contact with the VOA and other relevant bodies to get the advice, support, and guidance she required. She also alluded to the fact she may have been eligible for grant support and other help if she had been able to speak to the relevant departments sooner. This factor had added further to the appellant's financial pressures.

Decision of the Tribunal

7. Having regard to relevant legislation and all the written and oral evidence provided, the Tribunal decided as follows.
8. The only issue before it was whether the Valuation Officer was correct in her assertion to enter Bryn Ffynnon into the 2017 Non-Domestic Rating List with effect from 3 October 2020.
9. Mrs Morris explained that the appeal property was brought into non-domestic rates on 3 October 2020 as this was the date at which the criteria for the 1988 Local Government Finance Act (LGFA) had been met. This decision was based on the Form of Return (statutory document) completed by the appellant, stating that the exact date the number of letting days reached (70 days) was 3 October 2020.
10. A proposal was received from the appellant on 10 November 2020, requesting that the effective date be changed to 28 June 2020. Since receiving the proposal Mrs Morris had not received any additional booking evidence to support this alteration, despite requesting this on numerous occasions, as evidenced in her submission at VO8.

11. However, Ms Tyrrell subsequently submitted additional evidence on 22 January 2024, which Mrs Morris reviewed fully. She concluded she could not agree to entering the appeal property in the Non-Domestic Rating List from 28 June 2020, as the three tests under S66 (2BB) of the LGFA 1988 were not fully met at that date. Having reviewed the additional evidence, Mrs Morris was proposing that the correct date of entry into the List was 29 August 2020, as the additional evidence proved this was the date at which the three tests were fully met. She confirmed that this correction would now be actioned by means of a Valuation Office Notice.
12. Ms Tyrrell's main contention was that the cancelled bookings due to the COVID-19 pandemic should have been included in the total number of lets achieved by her to hit the 70-day criteria by the 28 June 2020.
13. She asserted that COVID-19 was an unknown factor when the relevant legislation was drafted, and its spirit and intention was not to penalise businesses like hers in this situation by not counting those lettings. She stated she had to pay both council tax and the second home premium on the appeal property.
14. Referring to the 2016 version of Section 66 (2BB) (LGFA 1988), Ms Tyrrell disagreed with Mrs Morris' interpretation that a let was defined as occupation. Her interpretation of let was when the property owner has agreed a contract, typically a licence to occupy to a guest in return for a commercial benefit. In this circumstance, the owner has relinquished their own right of occupation. The appellant believed the date of agreement for future occupation, for her not to occupy, and for there to be an exchange of money under a fixed commercial agreement was the date of letting.
15. Ms Tyrrell stated the relevant legislation did not define whether a let meant occupation. She also believed that her interpretation was echoed in other parts of the Act, and gave the following examples: -
 - Part 3 Section 64 (2A)
 - Schedule 6 F1 Clause 2.1 and F20 Clause 2

She contended the best example of her interpretation could be found in the VOA's Paper 150803 a Non-Domestic Rating Guidance Consultation published in 2018. There was a provision for the averaging of bookings across two properties in relation to holiday accommodation that were within a complex. She believed this was an important example of how lets are counted, and the intention of the legislation.

16. Ms Tyrrell maintained that within the COVID-19 year of 2020, the threshold of 70 days should have been reduced in proportion to the amount of days businesses like hers could trade under the directives of the Welsh Government at the time.

17. In respect of the subject appeal, the Tribunal was mindful the legal burden of proof rested with the appellant, who needed to show the 2017 Non-Domestic Rating List was wrong. It was not for the Valuation Officer to prove otherwise.
18. The Tribunal having reviewed Section 66 (2BB) pre 2022/2023 amendments, was of the opinion it was resolute in its wording and specified 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 let for at least 70 days in the past 12 months; and
 - be let on a commercial and short-term basis.
19. The Tribunal had considerable sympathy for Ms Tyrrell regarding the difficulties the COVID-19 pandemic caused her property and to a great number of other businesses in the vicinity and indeed across Wales. However, the Tribunal was 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.
20. It was also satisfied that no legislation enabling exemptions, discounts, or exceptions due specifically to the COVID-19 pandemic had been enacted by the Welsh Senedd.
21. In its examination of the legislation, the Tribunal recognised the Valuation Officer could only undertake an assessment of the facts and apply the rules under S.66 (2BB), despite the severity of wider circumstances that were prevalent at the time. The statutory scheme does not allow the Tribunal any discretion or wider powers to vary or amend the legislation that governs the administration of these rules.
22. 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 3 October 2020, albeit she would now correct this to 29 August 2020. In view of the foregoing, the Tribunal decided to dismiss the appeal.