

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Stena Line Ltd

Appeal property: Holyhead Port, Holyhead Harbour, Holyhead, LL65 1DQ & The Harbour, Goodwick, SA64 0BU

Appeal numbers: 680536358326/521NI17 & 684536358697/521NI17

The Matter Appealed against: Non-Domestic Rating Appeal

Date of Hearing: 26th February 2024

Appearances: Ms Hui Ling McCarthy KC (for respondent Valuation Officer) & Mr Timothy Morshead KC (for appellant)

Date of Decision: 19th April 2024

Decision of Tribunal: Allowed

Members of the Tribunal: Mr D Subacchi (Chairperson), Mrs A Lawson & Mr D Campbell

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. At the outset, the Chairperson explained that the tribunal's decision would be reserved.
3. The appellant ratepayer instructed Avison Young (UK) Limited to make proposals to alter two entries which appeared in the 2017 Non-Domestic Rating List. The two entries in question were described as Dock Hereditament and Premises and known as –
 - a. The Harbour, Goodwick, and
 - b. Holyhead port, Holyhead Harbour, Holyhead
4. With the exception of minor differences, the details of the proposed alterations advanced in respect of these proposals were broadly the same and set out as follows –

“We propose that the rating list entry showed for the above should be altered as follows: 13A. The rateable value altered to £1 with effect from 2nd January 2021. We have reason to believe that the rating list is inaccurate and that the alteration proposed in Part B of the form should be made because: 15D. Circumstances affecting the rateable value of the property changed on the 2nd January 2021.”

In their detailed reasons for making these proposals, the appellant contended that –

“...the RV is incorrect, excessive and bad in law and should be reduced to £1 following a material change in a matter described by paragraphs 2(7) (d) of Schedule 6 to the Local Government Finance Act 1988. DFDS, a competitor to the ferry operator providing the service between the hereditament and RI created a new six times a week ferry service between Rosslare and Dunkirk on the 2nd January 2021 to replace the prior route through the UK using the hereditament as a waypoint to RI. This has resulted in a reduction in the amount of freight and passenger traffic using the service, the traffic using the port and therefore the revenue received by the port operator at the hereditament. The provision of the new ferry service is in response to the implementation of the UK/EU Trade and Cooperation Agreement [the “TCA”] which came into effect on the 1st January 2021. This marked the end of the transition period following the UK's formal withdrawal from the EU on the 1st January 2020.

In our opinion the start of a new ferry service in Rosslare falls within paragraph 27D as matters affecting the physical state of the locality in which the hereditament is situated all which though not affecting the physical state of locality and nonetheless physically manifest “gateway” event.

TCA itself has resulted in significant increase in new tariff and non-tariff trade barriers for the UK and EU businesses with traders facing increased customs documentation, inspections and delays and industries having to replicate regulatory process is for the UK that only previously existed for the EU.

These changes are an enforceable essential characteristic impacting any hypothetical tenant for the hereditament and affect the way in which the tenant is able to enjoy the hereditament [para 2 (7) (a) Sch 6, 1988 Act]. [see Port of London Authority v Orsett Union Assessment Committee and others (1920).

Restrictions have now also been extended within the UK requiring customers and a regulatory border between the UK and Northern Ireland. Goods must be cleared by customs moving between Northern Ireland and mainland UK.

The TCA has a pronounced effect on freedom of UK transport operators to provide transport services in the EU. Limits are placed on the services or number of additional operations they can provide in each other's territories. The TCA applies to road passenger transport operators in either the UK or EU where they operate “regular or special regular services which both start and terminate in the territory of the other party”.

As a result of these changes the hereditament has seen a permanent and significant drop in freight traffic volumes and passenger numbers using this route between the UK and the Republic of Ireland.

These matters, inter alia, are relevant matters required to be considered in determining the open market rental value under the rating hypothesis and in our opinion have a detrimental impact on the hereditament. Consequently, the current assessment should be reduced to Rateable Value £1, effective date 2nd January 21.”

5. Upon receipt of these proposals, the VO deemed that they had been invalidly made. The appeals before this tribunal are those made against the Notices of

Invalidity. As a corollary, the tribunal is restricted by regulation from dealing with any other issue than those which relate to invalidity.

6. In cases of this nature, the Non-Domestic (Alteration of Lists and Appeals) (Wales) Regulations 2005 (ALA2005), requires that the VO commences proceedings. However, the parties presented a joint plea that the appellant should proceed first. As the tribunal should avoid in its proceedings any undue rules on formality, it had not objection to the respective cases being presented in this way.

Introduction

7. The appellant operates two dock and ferry port hereditaments in Goodwick and Holyhead, respectively. The respondent asserts that a new ferry service operated by one of the appellant's competitors between Ireland and France and which bypassed the UK altogether, did not amount to a material change of circumstances (MCC) as prescribed by paragraph 2(7) (d) of Schedule 6 to the Local Government Finance Act 1988. As a corollary, they contend that the proposals which the appellants had made on the grounds of MCC were not valid.
8. In their invalidity notices, the VO stated –

“The proposal is invalid because it fails to link the event in question to at least one of the matters specified in schedule 6 para 2(7) to the LGFA 88; namely, it is outside of the common meaning of locality”.
9. The VO infers that the appellant's proposals had failed to link the new route, because it is too far away geographically from the ports, so as to count as being in the common meaning of “locality” as required by para 2(7) of the Act.
10. The RV shown in the 2017 List for the hereditaments under appeal were based on traffic levels achieved at the ports before the opening of the new sea route.

Statutory framework

11. The circumstances in which proposals may be made in respect of the 2005 list and subsequent lists are prescribed by Regulation 4 of the ALA2005 regulations. Regulation 4 (1) (b) states that –

the rateable value shown in the list for a hereditament is inaccurate by reason of a material change of circumstances which occurred on or after the day on which the list was compiled

12. Regulation 3 of the same provisions states –

material change of circumstances”, in relation to a hereditament, means a change in any of the matters mentioned in paragraph 2(7) of Schedule 6 to the Act;

13. Regulation 6 of the foregoing provisions established the following requirements for making a valid proposal -

6.—(1) A proposal shall be made by notice in writing served on the valuation officer which must —

- (a) state the name and address of the proposer;*
- (b) state whether the proposer is, in respect of the property —*
 - (i) the interested person;*
 - (ii) the relevant authority; or*
 - (iii) a person described in regulation 4(2)(c);*
- (c) identify the property to which the proposal relates;*
- (d) identify the respects in which it is proposed that the list be altered; and*
- (e) include —*
 - (i) a statement of the grounds for making the proposal and, in the case of a proposal made on any of the grounds set out in regulation 4(1)(a), (c) or (g) to (o), a statement of the reasons for believing that those grounds exist;*
 - (ii) in the case of a proposal made on the ground set out in regulation 4(1)(b), a statement of the nature of the change in question and of the date on which the proposer believes the change occurred;*
 - (iii) in the case of a proposal made on the ground set out in regulation 4(1)(d) or (f), a statement identifying the alteration in question, whether by reference to the day on which the alteration was made or otherwise;*
 - (iv) in the case of a proposal made on the ground set out in regulation 4(1)(e), the information specified in paragraph (2);*
 - (v) in the case of a proposal made on the ground set out in regulation 4(1)(f), a statement of the day proposed in place of the day shown in the list; and*
 - (vi) in the case of proposal made on one of the grounds set out in regulation 4(1)(a) to (g), and (i) and (l), in respect of a hereditament occupied under a lease, easement or licence to occupy, the information specified in paragraph (3).*
- (2) The information required by paragraph (1)(e)(iv) is —*
 - (a) the identity of the hereditament to which the decision in question relates;*
 - (b) the name of the tribunal or court which made the decision;*
 - (c) the date of the decision;*
 - (d) the reasons for believing that the decision is relevant to the rateable value or other information to which the proposal relates; and*
 - (e) the reasons for believing, in the light of the decision, that the rateable value or other information to which the proposal relates is inaccurate.*
- (3) The information required by paragraph (1)(e)(vi) is the amount payable each year, as at the date of the proposal, in respect of the lease, easement or licence to occupy.*

14. Regulation 8 of these provisions governs procedures the VO may adopt if they believe the proposal was not validly made. In such cases, the VO was entitled to serve a notice of invalidity upon the proposer and state the reasons why the proposal(s) was not deemed to have been validly made. Notwithstanding this, the VO may also subsequently dispute the validity of proposal that were previously held to be validly made. There was no dispute between the parties that in respect of a hearing of an appeal made under Regulation 13 that the VO, despite originally accepting it as being validly made, subsequently considered to be

invalid, that procedures under Regulation 30 (13) would apply. However, this provision was not utilised in the appeals under consideration.

15. Paragraphs 2 (6) and (7) (d) of the Act states –

Where the rateable value is determined with a view to making an alteration to a list which has been compiled (whether or not it is still in force) the matters mentioned in sub-paragraph (7) below shall be taken to be as they are assumed to be on the material day.

The matters are—

...(d)matters affecting the physical state of the locality in which the hereditament is situated, matters which, though not affecting the physical state of the locality in which the hereditament is situated, are nonetheless physically manifest there...

Summary of the Case

16. The respondent's case that the proposals had been invalidly made was embedded in its view that the appellant had failed to link the event in question to at least one of the matters contained in para 6 (2) (7) to the Act.
17. The tribunal is confronted with two issues, the first of which was the VO's contention that the respective proposals were invalid on the basis that there was no MCC, and the second being, did the introduction of a new ferry route from Rosslare to Dunkirk qualify as an MCC on the grounds that it is a matter "*affecting the physical state of the locality in which the hereditament is situated or which, though not affecting the physical state of the locality, are nonetheless physically manifest there*". Since the VO considered further that the proposer could not demonstrate a reasonable belief that the legal grounds for making a proposal existed, then the proposals must have been invalidly made.
18. With regard to the second issue, the VO acknowledged that the ports may have been affected by Brexit, Covid and new competition in Ireland, but such matters should be dealt with under a revaluation and, with reference to *Merlin Entertainments Group Ltd v Cox (2018) UKUT 0406 "Merlin"*; *Wigan v Cox [2019] 0389 (LC)*, did not constitute an MCC.
19. The leading authority with regard to matters which pertained to the correct approach to be taken when the procedures for making a proposal to alter an entry in the rating list were not complied with is that of *Alam v. Stoyles (VO) [2018]*. The appellant's contention here was the validity of the proposal depended on compliance with the statutory procedure for making it, rather than on its substantive merits. The appellant also draws force from the findings of *Tuplin (VO) v. Focus (DIY) Ltd [2009]*, which established that it was not open to the VO to deny the existence of the relevant belief on the grounds that it was incontestably wrong.
20. With reference to Regulation 4 (1) (a), the VO pointed out that a "reason to believe" was required, rather than merely "a belief". As a corollary, the existence of a valid MCC was a prerequisite to making a valid proposal. Since there was no MCC that fulfilled the criteria under para 2(1) (d), then it was not possible in the VO's opinion, for the appellant to have made a valid proposal. The VO advised

the tribunal to pay heed to an attempt by a ratepayer to submit a proposal on the subjective belief that an MCC existed and contrasted such a scenario with one who might form a more objective view of the circumstances and would not lodge such a proposal.

21. As a corollary, the VO contended that it must be the case that for a ground to exist, then there must have been a factual basis for it, otherwise the question of a proposal's validity might turn on a misguided or subjectively held view. Moreover, where there is no proper factual and/or legal basis for a proposal and/or the proposer cannot demonstrate a reasonable belief that the legal grounds for making a proposal exist, then the proposal must be treated as invalid. The VO's view is that invalidity procedure enabled the VO to quickly and efficiently dispose of legally flawed proposals at an early stage, without having to waste time and resource. However, the appellant postulated that the VO had over-extended themselves in the interpretation of the invalidity procedure found under regulation 8. The appellant says that the rules require that where a person had a belief in certain matters, it was not open to the VO to deny the existence of this merely because the substantive issue had no merits and point again to *Tuplin* in support of this.
22. With regard to the word "locality", the VO suggests that it should be construed straightforwardly as any reasonable person might interpret the meaning of neighbourhood or vicinity. However, the appellant refers to the authority of *Morton (VO) v. Synor Electronics [1983]* which makes the point that the term locality is not defined and is a matter of fact for each case. The Lands Tribunal judgement of *Shearson Lehman Bros Ltd v. Humphreys (VO) [1999]* was also advanced in evidence to highlight the imprecise nature of the term locality.
23. The VO refers to the Oxford English Dictionary's definition of the term "locality" where synonyms include "*vicinity, surrounding area, neighbourhood, district, environs*". The ordinary meaning of the word implies a degree of physical proximity and geographic linkage or continuity which is common to these synonyms. They say that despite comments made by the appellant in their case, the VO's interpretation does not impose an "*arbitrary limit*" and recognises that the scope of "*locality in which the hereditament is situated*" will be a matter of fact and degree in any given case. However, it is dependent upon relevant factors such as natural, man-made or other geographic features.
24. The VO also points to the "golden rule" of statutory construction which requires that statutory words and phrases need to be given their natural and ordinary meaning within their context, unless the meaning produces injustice, absurdity, anomaly or contradiction. The VO draws attention to a Court of Appeal judgment *Stock v Frank Jones (Tipton) Limited [1978]* which explains that where ambiguity in the drafting of legislation exists, it was open to the courts to adopt a "*purposive*" approach and choose between potential meaning in order to determine the intention of parliament. However, the VO also points out that it was impermissible to rewrite the statutory language which might otherwise give rise to conjectural intentions without the appropriate support. They refer to an extract in their submission of *Frankland v IRC [1997] STC* which assists the VO's view that no ambiguity exists in the statutory language read in conjunction with para 2(7) of the Act in regard to the word "locality".
25. As a corollary, and for the purposes of this case, the VO adopts for the meaning of "locality" as "neighbourhood", "setting" and "vicinity".

26. The VO draws the tribunal's attention to the importance of separating relevant changes to the locality which causes the list to be inaccurate from universal and economic changes which impact on value where the opportunity to deal with such matters is upon revaluation. They refer to the cases of *Kendrick (VO)* and *Merlin Entertainments Group Limited v Cox (VO)* [2018] UKUT in support of this. They say that locality is not coterminous with one's "economic footprint" because this relates more closely with the occupier's business rather than the hereditament and the physical characteristics. Whilst the appellants accept that Merlin did not address the meaning of locality in detail, it did refer to the legislative rationale for para 2(7) as a whole. The appellants point out that the legislative emphasis distinguishes between physical factors that affect the hereditament and those which relate to general economic circumstances which produce no physical manifestation and may operate across undifferentiated zones.
27. The appellant said it was clear that the legislative emphasis was not placed on distance per se, but on making a distinction between the physical factors which affect the hereditament with those of economic circumstances which may produce no physical manifestation which may operate across different zones. The concept of "locality" helps to serve that distinction, rather than any kind of preconceived idea about how near to a hereditament a physical matter must be manifest before it can be considered as an MCC.
28. With regard to locality, the VO references an example commonly observed in tribunal hearings where valuers attempt to determine the value of a hereditament by reference to comparable properties. Whilst the valuation area (the location in which comparable and subject properties coexist) and the meaning locality may overlap, the VO asserts no legal principle or statutory support which suggests they are the same. They point to the relevance and quality of the available evidence and professional judgment of the valuer as being more relevant. The VO relies on *Shrewsbury Schools v Shrewsbury Borough Council and Plumpton* [1960] and *K Shoes Ltd v Hardy* [1980] where different valuation areas were accepted for opposite sides of the same street.
29. To illustrate the points the VO makes here, they suggest that the further away the matter is, the less likely it is to be within the locality. Locality in urban areas may be different to that in rural locations. Moreover, separation by geological formations such as, for example, rivers and mountains may indicate that another area is not part of the locality in which the subject hereditament is situated. By including the words "locality in which the hereditament is situated", connotes Parliament's intention which was that the VO should not be required to possess or acquire knowledge of properties that were otherwise situated elsewhere in the world, in order to maintain a valuation list.
30. The VO asserts that the ratepayer had failed to address issues which related to locality and what it means. Save for their statement, "*As is obvious, the value of the Appellant's ports is affected by the amount of traffic passing through them: the busier the better, from the point of view of value*", the VO had not been persuaded the appellant had articulated within their proposals, why there had been an MCC. They say that such details do not relate to an MCC which relates to locality because it is concerned with the hereditament and draws force from the findings of *Merlin* and *Wigan* which make it clear that an MCC founded on such a footing cannot succeed. Nevertheless, the appellants advance the fact that such agreements about locality, within the context of Para 2(7), had been reached with the VO in other cases, gave force to their argument that the

appellant had “reason to believe” that, in this case, the new route is near enough to the hereditaments to fall within Para 2(7).

31. The VO attaches no weight to the evidence produced by the ratepayer in which the parties made agreements in respect of other assessments at considerable distance from the hereditaments concerned. They cite an extract of *Gallagher v Church of Jesus Christ of Latter-Day Saints* [2004].
32. Whilst the appellant contended that the reduction in freight and pedestrian traffic at the ferry ports “*are nonetheless physically manifest there*”, the VO points out that changes in traffic and numbers of cars are not in themselves an MCC because they merely reflect changing economic circumstances and draws attention to *Wigan Athletic Football Club v Cox* [2019] which support this.
33. In addition to complications brought about by Brexit, the VO also drew attention to the impact of Covid-19 Pandemic all of which had an impact on traffic levels at the ferry ports. The Upper Tribunal (*Merlin*) considered the proper construction of para 2(7) (d). It held that the “matter” relied upon refers to a physical characteristic of the locality and must be a matter which itself is physically manifest in the locality. As a corollary economic matters or other intangible matters do not fall within the ambit of para 2(7). Had the legislators intended that the scope of para 2(7) could cover the failure of a business, then provisions would have been expressly provided for. Nevertheless, the appellant argues that “locality” like many English words depends on context for its meaning. The appellant considered that it was perfectly acceptable use of language to speak of planets in the locality of the Earth or other objects that appear in the celestial sky.
34. The appellant asks the tribunal to note that the VO had not relied on any procedural defect in the making of the proposals. The issues they have addresses, instead, focuses on their merits rather than their validity.
35. Under regulation 8(7) (c), the VO is required to state the reason for deeming that the proposal was invalidly made. With this in mind, the complaint the VO has made in regard to these proposals was that each “*fails to link the event in question to at least one of the matters specified in Sch 6 para 2(7) to the LGFA 88; namely that it is outside the meaning of locality*”.
36. However, the appellant says that all the statutory scheme requires for making proposals (regulation 6(2) (d) (ii)) is reference to “*in the case of a proposal made on the grounds set out in regulation 4 (1) (b) a statement of the nature of the change in question and of the date on which the proposer believes the change occurred*”. In light of this, the appellant tells the tribunal that the statutory requirement for making a proposal(s) has been met because they had stated what the nature of the change was, i.e. the start of a ferry service in Rosslare falls within Para 2(7) (d) and specified the date on which the appellant believes the change occurred, i.e. 2nd January 2021.
37. The appellant postulates that the VO does not challenge that the proposals satisfies one or both of the ways in which the “physical” element can be satisfied under Para 2(d) and is limited to whether or not the satisfaction of that element is in the “locality”. The argument the VO makes about locality is that the new route operates too far from the ports to count under para 2(7). However, the appellant

says that such matters are not related to validity of these proposals but points to the merits of substantive matters.

38. The appellant draws to the tribunal's attention the problems one might face if one starts with a preconceived view about what counts as "locality" and works backwards. By nature of an example, the appellant refers to the case of two petrol stations situated on a trunk road which, due to their respective distances of one and fifty miles from a new motorway are affected in different ways. From this example the appellant suggests the absurdity of the reality facing the petrol station situated nearest to the motorway, rather than the one furthest away, could invoke Para 2(7) of the Act. This example served to demonstrate that the relevant zone of the enquiry depends, in all cases, on the particular facts of it.

Decision of the Tribunal

39. The tribunal was grateful to the parties for the way in which they presented their cases and for the information that they included.
40. In so far as these appeals are concerned, the grounds upon which a proposal to alter an entry in the 2017 local non-domestic rating list may be made is provided for by Regulation 4 (b) of the ALA 2005 regulations. These being –

"the rateable value shown in the list for a hereditament is inaccurate by reason of a material change of circumstances which occurred on or after the day on which the list was compiled"

41. The issues before the tribunal arose following the VO's service of invalidity notices upon the appellant ratepayer, because they failed to link the event in question to at least one of the matters specified in schedule 6 para 2(7) to the LGFA 88; namely outside of the common meaning of locality.
42. From its reading of the 2005 regulations, one's ability to make a proposal is galvanised by Regulation 4 (2) (a) and (b) which requires interested parties to make a proposal where *"it has a reason to believe"* that certain grounds set out in Paragraph 4 (1) exists. The VO dedicated a significant part of its case about the objective considerations one should make in the part of the appeal process. However, it was not persuaded that this would be necessary and finds that an ordinary person could simply bring to the VO's attention, in a non-legal way, matters which they believe have made the list inaccurate with regard to that entry.
43. The tribunal considered that the VO sought to point out what it believed were fatal flaws in the MCC argument that the proposals identified and therefore they were rendered invalid. However, the tribunal did not consider that a deeper reading of para 2 is required at this stage, and that irrespective as to who made the proposal, it should be taken on face value and ought not be read with too much legal strictness.
44. The tribunal believes its view in this regard is supported by the findings in *Alam v Stoyles (VO) [2018]*, referred to within the appellant's evidence, which states that the proposal only need be procedurally compliant in order that it would progress to a stage where its more substantive issues be considered. The tribunal's view is further emboldened in this regard by *Tuplin*, in which it is reminded that it was not open for the VO to deny the existence of a relevant belief merely because

they considered it to be wrong. In such cases the merits of the proposal are to be determined in light of the evidence.

45. The tribunal is invited to consider whether the grounds of the proposals link with the new route should fail because it is geographically too far removed from the subjects. As a corollary the VO contends that they do not conform with one's understanding of the meaning of "locality". The tribunal is reminded that these proposals were made on the ground that the list was inaccurate by reason of a MCC which occurred on or after the day on which it was compiled. The matters which are to be considered on the material day are provided for under Schedule 6 (2) (7) of the LGFA 88. The wisdom of the authorities placed before it made clear that the word "locality" could not be defined because it was clearly something that related to context. No doubt the precise meaning of locality should mean something when it was confined to the facts of each case, which are all considered on their own merit.
46. Irrespective as to the meaning of "locality", the tribunal finds that in its reading of the ALA (Wales) 2005 Regulations, it is only necessary that the proposals are statutorily compliant. The parties will be aware of a great number of proposals which do not serve to assist the VO in the maintenance of lists. They may be destructive in their purpose, serving only to confuse and disrupt their statutory duty. These proposals are not those. The tribunal finds from the admitted facts that they have identified matters that have potentially brought the list to a point where it is inaccurate in so far that it relates to these appeals. The matters associated with locality are matters that must be addressed with the general merits of the substantive case and not be wound up in the general correctness of the alleged inaccuracy.
47. In its conclusion, the tribunal finds that the appellant has satisfied the general mechanics of making a proposal in that they have provided a statement of the nature of the change and, also the date on which the proposer believes the change occurred.
48. In view of the foregoing, these appeals are allowed.