

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Mr Sailesh Patel

Appeal Property: 177 Clare Road, Cardiff CF11 6RX

Appeal number: 685535355464/537NV17/4

The Matter Appealed Against: 2017 Rating List

Date of Hearing: Thursday 28th March 2024

Appearances: Mr S Patel, Mr C Patterson (for the appellant) & Mr G Allen (for the respondent Valuation Officer)

Date of Decision: 25th April 2024

Decision of Tribunal: Appeal dismissed

Members of the Tribunal: Mrs LM Thomas (Chairperson), Mr RG Harris & Mr JR Pyrke

Tribunal Clerk: Mr G Harris

Introduction

1. The appeal before the Tribunal followed a proposal made by Mr Patel in respect of 177 Clare Road, Cardiff. The proposal sought that the entry in the 2017 Rating List be reduced from £12,750 to £2,878 with effect from 1st March 2018 on the following grounds –

This premises is a bar and should have a base rate according to it, exactly the same as across the road 158-160 Clare Road

2. The valuation under consideration had been produced in accordance with Paragraph 2(1) Schedule 6 of the Local Government Finance Act 1988 which stated –

2(1) The rateable value of a non-domestic hereditament [none of which consists of domestic property and none of which is exempt from 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.

3. Schedule 6 also provided for the Antecedent Valuation Date (AVD), the date by reference to which the rateable value of the hereditament was to be determined, this was 1st April 2015 for the 2017 Rating List.
4. Case Law referred to in the appeal –
 - Vines Ltd v Mauny (Valuation Officer) (2010)
 - Ladies' Hosiery and Underwear v West Middlesex Assessment Committee (1932)
 - Scottish & Newcastle Retail Ltd v Williams (VO); Allied Domecq Retailing Ltd v Williams (VO) (2000)
5. 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.

Parties' submissions & decision

6. Mr Patterson explained that Mr Patel had taken occupancy of the appeal property during April 2013. It had originally been run as a restaurant until the departure of the chef during October 2013, it had then operated as a licenced club until Mr Patel left during August 2023. Mr Patterson stated that he had seen the club rules and membership forms and that it had a constitution. The appeal property had not been a shop during Mr Patel's tenancy.
7. Mr Patterson explained that Mr Patel considered his Rateable Value (RV) to be significantly high, especially when compared to Legends, 158-160 Clare Road which was 3-4 times larger with separate bars over the ground and first floors. To support his contentions Mr Patterson provided the tribunal with documentation highlighting the RV calculations of both the appeal property and that of Legends for the 2010, 2017 and 2023 Rating Lists.
8. Mr Patterson noted the RV of Legends had been reduced on more than one occasion resulting in less being paid than that of the appeal property despite the difference in size and the properties being opposite each other.
9. Mr Allen described the appeal property as being located on a predominantly retail street in the Grangetown area of Cardiff within a mix of shops, takeaways, and restaurants. It appeared as a typical shop unit for the area, built of traditional brick construction. The current RV was £12,750 with a base rate of £200/m². The basis of valuation was disputed, with Mr Patel contending that the property should be valued as a 'bar and premises' like that of Legends opposite.

10. Mr Allen provided photographs of the appeal property and comparable properties together with a survey plan, explaining that the property had been inspected on 20th November 20023 where differences in the survey data had been found, the kitchen was found to be larger and there was air conditioning and external stores. This had resulted in a revised valuation of £13,750, to be actioned via a notice from the date of the schedule.

11. Mr Allen explained that the basis of change requested by the appellant was dependent on the alterations made to the property. Consideration had to be made in relation to the hypothetical tenant, the property as 'vacant and to let' and the '*rebus sic stantibus*' principle which had two limbs, set out under *Scottish & Newcastle Retail Ltd v Williams (VO)*; *Allied Domecq Retailing Ltd v Williams (VO)* (2000) as –

'The rebus sic stantibus rule identifies for the purpose of valuation the hereditament, the physical changes which may be made to it, and the mode or category of occupation. The rule rests on the concept that what has to be determined in rating is the value to the occupier of his occupation of the hereditament, measured by the rent on an assumed yearly tenancy. In carrying out a valuation under the rating hypothesis the following assumptions are to be made about the hereditament:

- (a) That the hereditament was in the same physical state as on the material day. Alterations which the hypothetical tenant might make to the hereditament may be taken into account if, taken overall, they are minor. All other prospective alterations to the hereditament are to be ignored.*
- (b) That the hereditament could only be occupied for a purpose within the same mode or category of purpose as that for which it was being occupied on the material day. Any prospective change of use outside of that mode or category is to be ignored. In determining to what mode or category a particular use belongs it is the principle characteristics of use and the methods of valuation commonly applied by rating surveyors to which regard must be had; and shops, offices and factories serve as examples.'*

12. Having inspected the property, Mr Allen was of the opinion only minor changes would be required, something a reasonable prospective tenant would undertake. As such he was not looking to change the basis of valuation under the *rebus* principles.

13. Mr Allen explained that the rent of £16,000 agreed in November 2013 by the appellant. Mr Allen considered this to clearly be in excess and therefore supportive of both the current and revised RVs of £12,750 and £13,750 respectively.

14. Mr Allen described the locality as having other premises similarly valued under the basis of restaurant and premises description but zoned and valued as a shop. Both 181 Clare Road and 183-185 Clare Road, in close proximity to the subject property, were valued as such with a base rate of £200/m². The same base rate was commonplace on that section of Clare

Road, used on adjoining properties and as early in the street as 110 Clare Road.

15. Referring to Legends, Mr Allen explained that it was occupied as a club and premises and had been valued as part of a national agreement for such properties. Mr Allen did not consider it to be truly comparable due to its size and mode and category of use. The valuation in the 2017 List of RV £5,600 was in contrast to the actual rent passing of £16,000. Mr Allen stated that in line with guidance set out under *Ladies' Hosiery and Underwear v West Middlesex Assessment Committee (1932)* settlement evidence of one property would not necessarily indicate the need to sacrifice correctness for uniformity.
16. In conclusion Mr Allen, after considering the available evidence, and having inspected the appeal property and comparables saw no reason to change the basis of valuation of the property and requested that the tribunal dismiss the appeal.
17. In his proposal the Mr Patel had contended that the Rating List was inaccurate and that his RV should be reduced to £2,878 on the basis the property should be valued as a club and premises rather than on a zonal basis as a shop. In line with the case *Vines Ltd v de Mauny (2010)* the Tribunal accepted that the burden of proof rested with the appellant on the basis that 'he who asserts must prove.' Therefore, in the case under consideration the persuasive burden of proof rested with the appellant ratepayer and not the respondent Valuation Officer by virtue of a statutory duty to prepare and maintain the Rating List.
18. In his contentions Mr Patterson had provided the relevant valuation of both the appeal property and Legends, the tribunal accepted that Legends had been valued as part of a national scheme for clubs therefore had to decide whether the appeal property should be valued similarly. Although Mr Patterson had contended that the property had operated as a club and that he had seen the club rules, constitution and membership forms no evidence had been provided to the tribunal, therefore the tribunal placed little weight on this.
19. After consideration of all the evidence, case law and Legislation the tribunal believed Mr Allen had been correct to value the property as a restaurant and premises, using a zonal basis of valuation akin to a shop. The hereditament had to be valued under the statutory terms 'vacant and to let'. Looking at the property empty and to let the tribunal believed a hypothetical tenant would consider the property to be a shop, only minor alterations would be required which a hypothetical tenant would reasonably undertake. The appeal was therefore dismissed.