

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Velda Edwards

Appeal property: 4 Abernant Road, Aberdare, CF44 0PY

Appeal numbers: 694035577358/537NV17/31

The Matter Appealed against: Non-Domestic Rating Appeal

Date of Hearing: 8th May 2024

Appearances: Mr M Muqbil for respondent Valuation Officer

Date of Decision: 5th June 2024

Members of the Tribunal: Mr J Uzzell (Chairperson), Ms E Jones & Mr J Pyrke

Tribunal Clerk: Mr J Evans

Introduction

Introduction

1. On 23rd September 2021, the Valuation Officer (VO) received a proposal in which the appellant ratepayer, Velda Edwards, sought an alteration to an entry which appeared in the Non-Domestic Rating List (list). The list entry related to offices and premises at 4 Abernant Road, Aberdare and had been valued at £14,750 Rateable Value with effect from 1st April 2017.
2. The appeal property comprised a two-storey detached office building constructed in brick and timber frame.
3. At the material day, that being the day on which the VO received the proposal, the appellant asked that the property be deleted with effect from 25th May 2018 on the following grounds –

“Building is in an uninhabitable state; the property needs to be demolished and is unsafe but due to covid there has been considerable delay with this, the property was in this state when purchased and therefore should be non-rateable and taken off the list”

Evidence & Submissions

4. The appellant ratepayer’s case was dealt with in their absence.
5. The appellant’s case comprised a bundle of documents which included a breakdown of costs, photographs of the property which depicted its disrepair and some which showed the state of the property following the removal of its roof. They also supplied an asbestos refurbishment survey undertaken by Breathe Environmental Services Ltd (2019) and a document called “Certificate for Identification of Asbestos Fibres”, various items of correspondence with utility companies, dated June 2021, detailing the disconnection of gas and electricity supplies and a plethora of emails between the appellant, respondent and other third parties.

6. The respondent submitted its response to the appellant's case which also included a legal argument for its refusal to comply with the list alteration sought by the appellant.

7. In support of its case, the VO referred to the following authorities -

- a. *Vines Ltd v de Mauny (Valuation Officer) (2010)* which discussed upon whom the burden of proof rested in cases of this nature
- b. *Newbiggin (VO) v S J & J Monk [2017] UKSC*
- c. *Jackson (VO) v Canary Wharf Limited [2019] UKUT*

8. The relevant law was contained in –

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

9. 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.*

10. The determination of Rateable Value requires that a valuation is undertaken at the Antecedent Valuation Date on the statutory basis but taking account of physical circumstances as they are on the material day. The material day could be the day the rating comes into force or as a result of valuation which has come about following a subsequent list alteration.

11. 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—

- (a)matters affecting the physical state of the hereditament,*
- (aa)matters affecting the physical enjoyment of the hereditament,*
- (b)the mode or category of occupation of the hereditament,*

(c)the quantity of minerals or other substances in or extracted from the hereditament,

(cc)the quantity of refuse or waste material which is brought onto and permanently deposited on the hereditament,

(d)matters affecting the physical state of the locality in which the hereditament is situated,

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

(e)the use or occupation of other premises situated in the locality of the hereditament.

12. Paragraph 6(2)(8A) of the Act makes clear that the state of the hereditament at any time relevant for the purposes of a list shall be assumed state of repair under 2(1).

Summary of the Case

13. The crux of this case was whether at the material day, the property ceased to be a hereditament owing to it being incapable of beneficial occupation. It was accepted that the property was in a generally poor state of repair and that it required refurbishment. The Tribunal had also been made aware of the presence of asbestos in the building.
14. The Tribunal also learned that the appellant had submitted a planning application to demolish the property, although the authority was understood to have declined it. Mr Muqbil said that even if the application had been approved, this would not have been a basis on which a deletion could have taken place. Whilst the appellant had provided a list of costs that amounted to £306,776.02, the appellant had not provided the VO with an estimate of costings of repair work and evidence of the property's condition at that time, although they stated that the costings did relate to repair work. However, the VO maintained that the necessary costing information which related to that which could have put the property into a lettable condition had been supplied. In an email between the appellant and the VO, the appellant indicated that the estimated total build cost was between £550k - £750k and the demolition works would cost between £30k - £35k. However, Mr Muqbil did not consider that the works which were required at the time the photographs were taken (April 2022) were severe enough to regard the building as being beyond economic repair.
15. During their preliminary discussion, the appellant points out to the VO that the property had been exempt from rates, which Mr Muqbil concluded was due to its poor condition when it was purchased in 2018. However, there was little information about this. They also point out that delays in the planning and the impact of Covid had hindered their progress.
16. With regard to the presence of asbestos at the appeal property, Mr Muqbil points out that the remedial cost only relates to the asbestos removal that would be required to demolish and reconstruct the building. The supplied information did not relate to the repair work which would be necessary to render the building capable of being let out.

17. In support of his case, Mr Muqbil referred to the statutory definition of Rateable Value and the assumptions one must make for rating purposes. He made particular reference to Schedule 6 2(b) of the Act which stated –
- b. *“...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”*
18. This requires that those works which the landlord would consider uneconomic would be excluded from the assumption. One must otherwise presume that the property is in a state of reasonable repair, even if it is not. Mr Muqbil turns to the judgments of two authorities (*“Monk”* and *“Canary Wharf”*) to support this aspect of his case. Mr Muqbil points out that *Monk* operates in conjunction with the assumption referred to above in the Court of Appeal decision but an exception is made for hereditaments which are incapable of beneficial occupation whilst they are undergoing redevelopment in the Supreme Court’s decision in the same case.

The Tribunal’s Decision

19. Having considered all of the evidence submitted before it, the Tribunal was not persuaded, that the property could be deleted from the list from 18th May 2018 as the appellant had sought.
20. The Asbestos Report discussed the removal of the material which would be necessary in order to reconstruct the property but did not address the work that might be required in order to put the property into a condition that could procure a letting. As a corollary, the Tribunal was unable to attach any weight to this report within the context of this rating appeal. By the same token, had the planning permission to demolish the property been approved, this would still not have justified the deletion of the hereditament until the work for its actual deletion had commenced.
21. The photographs placed before the Tribunal depicted a property in a poor and neglected condition which required refurbishment. The scope of the appellant’s proposal was that on the material day (day VO received the proposal), the appellant asserted that the property should have been deleted from the list with effect from 25th May 2018. The appellant had produced photographs of the property’s condition which had been taken some 4 years later than the proposed deletion date. Unfortunately, this evidence did not persuade the Tribunal that its state of repair was that which a landlord would find uneconomic to undertake. The issues that related to asbestos and the planning application were not sufficient to delete the property from the list.
22. The Tribunal was unable to place great weight on the costings the appellant had produced. The works to demolish had not started at the material day, and in any event these calculations appeared to be estimates that could be the subject of change or alteration. Whilst the internal photographs provided depicted a property in a poor condition, the appellant had not provided a schedule of works which might otherwise identify the types of works that would be required and their actual costs to restore the building to its previous condition.

23. Whilst the Tribunal noted the emails supplied by the appellant in their bundle, it considered that the contents of these were largely conversational in their nature and did not serve to add weight to the argument for a deletion.
24. From the admitted evidence, the Tribunal decided that it could not delete the property from the 2017 Rating List from the date advanced by the appellant.
25. The Tribunal notes that the Valuation Officer intends to delete the appeal property from the 2023 Rating List with effect from 12th December 2023. However, any matter concerned with this is outside the scope of this appeal.
26. The appeal is dismissed.