

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Winston Richard Phillips on behalf of Red Lion Limited

Appeal Property: Public House & Premises, Red Lion Inn, Church Road, Penderyn, Aberdare, CF44 9JR.

The Matter Appealed against: 2017 Non-Domestic Rating List

Date of Hearing: 20 June 2024

Appearances: Mr P Weavers of Davies & John (Powys) acting for Red Lion Inn (Appellant) and Mr A Morse representing the Valuation Officer (VO)

Date of Decision: 15 July 2024

Decision of Tribunal: Appeal dismissed.

Members of the Tribunal: Mr A G Hallett (Chair), Mrs B C Martin and Mr R G Harris

Tribunal Clerk: Mr R Williams assisted by Mr M Keylock

Introduction:

1. The subject appeal dated 9 November 2021 challenged the entry of the appeal property in the 2017 Non-Domestic Rating List at £18,000 Rateable Value (RV) with effect from 30 June 2021. The grounds of appeal as contained in the appeal form are replicated as follows:

“The Rateable Value altered to £7800 with effect from 30 June 2021.

The rateable value shown in the list by reason of an alteration made by the valuation officer on 30 June 2021 is inaccurate.

The rent of the Red Lion of £650 per month given its location on a hill almost a mile from the small village of Penderyn is its market value. The authority’s own calculation in respect of market rent and rateable value indicated in June 2021 is far too high. The new rateable value needs to come more in ration with the rent.”

Legislation & Case Law

- The Local Government Finance Act 1988
- The Rating (Valuation) Act 1999
- The Rating Lists (Valuation Date) (Wales) Order 2014 Statutory Instrument No.2917 (W.297)

2. *The following is a summary of the cases presented 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.*

The VO's Case

3. The VO referred to the basis of valuation as defined in paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988, as amended by section 1(2) of The Rating (Valuation) Act 1999.
4. It was explained that the rateable value (RV) of a hereditament was an estimate of the rental value at the Antecedent Valuation Date (AVD), which for the 2017 Non-Domestic Rating List was the 1 April 2015, whilst having regard to the physical factors as they were at the Material Day (MD), which in the case of the subject appeal was 30 June 2021.
5. It was further clarified that for the purpose of rating valuation, the hereditament must be valued on the assumption that it was vacant and to let in its actual physical state, subject to the usual repair assumptions, and for a use within the same mode or category of occupation as the actual use.
6. The VO confirmed that valuation of licensed premises had been agreed between the VO and the British Beer and Pub Association and as a result, a scheme of valuation had been approved and a guide published. The profits method was considered appropriate for the valuation of public houses, based on analysis of accounts and other relevant information, from which a valuation scheme relevant to the application of differential percentages to the fair maintainable turnover (FMT) had been developed. This shortened profit method formed the primary valuation approach for all licensed premises.
7. The FMT represented the annual trade considered to be maintainable at the AVD, having regard to the physical nature of the property and its location at the MD, assuming that the business would be conducted proficiently by a reasonably efficient operator responding to the normal trading practices and competition of the locality. The percentages to be applied will vary according to the physical characteristics of the premises and nature of the trade.
8. The VO explained that the FMT was established from actual trade receipts close to the AVD, provided via Forms of Return completed on behalf of the occupier declaring £329,000 for 2017; £417,000 for 2018 and £555,000 for 2019.

9. The trade receipts reflected the significant overhaul and improvement to the premises following its reopening in Autumn 2015. The trade figures also reflected the increased trade of both wet and dry sales in those years following the AVD, in particular dry sales which accounted for two thirds of the trade passing in 2019.
10. The VO accepted that novelty value should be recognised when a new improved business opens, however, the trade achieved in 2018 and 2019 showed an upward trend and therefore suggested that a good level of trade would continue to be achieved for the foreseeable future.
11. With regard to the appeal property's valuation, the VO had adopted a trade figure of £300,000, reflecting the lower end of the trade figures achieved at the appeal property, splitting the trade into £125,000 wet and £175,000 dry, respectively.
12. Referring to the guide, it was confirmed that both parties agreed that the appeal property should be considered as a 'Category 2 Destination House' and when applying the relevant percentages, the VO adopted a 'middle range' percentage at 5.88% to the wet trade resulting in a figure of £7,350.
13. In respect of the dry trade, both parties agreed that the appeal property should be considered at Band B and in applying the relevant percentages, the VO adopted a 50% scale figure of the percentages at 6.43% resulting in a calculation of £11,253.
14. The resulting wet and dry figures of £7,350 and £11,253 arrive at an assessment of £18,000 RV in respect of the valuation of the appeal property.
15. As a cross check, a valuation was also prepared based on floor space of the newly extended and improved premises. The resultant valuation arrived at the same £18,000 RV.
16. In support of the assessment of £18,000 RV, the VO made comparison to local public houses reflecting varying levels of FMT. It was highlighted that those public houses who relied only on wet sales and have not been recently refurbished were towards the lower end of the valuations adopted. However, licensed properties that had received investment and consequently been improved along with offering both food and wet trade attracted higher values resultant of the higher trade levels achieved.
17. Particular reference was made to two public houses trading at similar levels to the appeal property offering both food and wet trade namely the Glancynon Inn and the Angel Inn. It was highlighted that these comparable assessments were larger attracting £50,000 RV and £32,000 RV respectively, valuations that were larger than the appeal property at £18,000 RV.

18. In view of the foregoing evidence and having regard to relevant legislation, the VO requested that the Tribunal dismiss the appeal and confirm the appeal property's current assessment of £18,000 RV to be fair and reasonable.

The Appellant's Case

19. The appellant stated that he was somewhat confused as to the VO's approach to valuing the appeal property. He was under the impression that the subject appeal was against the VO notice of alteration dated 4 July 2021, where the valuation of £18,000 RV was based on floor area. Yet the VO now contended that the appeal property's assessment should be valued having regard to FMT in line with VO's approved guide for valuing public houses, which ironically enough arrived at the same level of assessment of £18,000 RV.
20. There was no logical explanation as to why the VO had altered its approach from the 2017 Compiled List entry of £5,400 RV, which was based on wet sales with a FMT of £110,000 adopting a rental of 4.99%, and then adopting a revised assessment of £18,000 RV effective from 30 June 2021 based on floor area, which reflected an increase of 333%. This surely illustrates the inconsistencies of the VO in its approach to valuation.
21. The appellant suggested that the VO's approved guide was not set-in stone and quoted directly from the guide the following "*...the opportunity for individuals to seek to have their houses valued outside its terms, where exceptional circumstances would otherwise make their application inappropriate, is not precluded.*"
22. It was reported that his client improved the appeal property in order that its business direction would change from being just wet sales such as a 'pint and packet of crisps' experience to that of a dining pub concept based on the foundation that trade would improve with customers willing to travel by car to experience the offering of high-quality dining, fine wines and ales.
23. Whilst the change of direction had increased business turnover, albeit not during the period of the Covid-19 pandemic, the VO had failed to take a "stand back and look" approach into consideration when valuing, in that the business had also witnessed an increased demand in costs regarding produce, utilities and salary rates for skilled labour above the minimum wage.
24. Additionally, the appeal property had the negative aspect of being located remotely at the top of a steep hill with access only via a pothole ridden single track lane which whilst has been adopted by the local authority was not maintained regularly in particular in the winter. There was also the competition of a second public house within the locality of Penderyn.

25. The appellant suggested that the valuation of the appeal property should be looked at in a far more nuanced fashion, adopting a far broader outlook where all figures and factors were considered along with the knowledge of the appeal property when arriving at the correct level of assessment.
26. Little weight was attached to the comparable properties submitted by the VO as it was suggested that they were completely different public houses to that of the appeal property.
27. The appellant contended that in accordance with the VO approved guide that the subject appeal be allowed and an interim figure of £9,000 RV effective from 30 June 2021 in order to allow further discussions to take place based on facts pending a more nuanced valuation.

Decision

28. When arriving at its decision, the Tribunal was aware that the appeal property must be valued for the purpose of non-domestic rating on the basis of the rent at which it might reasonably be expected to let from year to year based on a number of assumptions, which was in accordance with Schedule 6 to the Local Government Finance Act 1988.
29. The Rating Lists (Valuation Date) (Wales) Order 2014 Statutory Instrument No.2917 (W.297) dictates the date of the hypothetical rent being the Antecedent Valuation Date of 1 April 2015.
30. In the absence of any passing rent, both parties agreed that the correct valuation method for the appeal property was the shortened receipts and expenditure method having regard to the fair maintainable trade as directed in the approved guide for valuing public houses.
31. The Tribunal accepted the Valuation Officer's explanation that the valuation of the appeal property based on floor space was purely a 'cross-checker' to the valuation based on fair maintainable trade.
32. Accordingly, the Tribunal based its decision by valuing the appeal property on the shortened receipt and expenditure method having regard to a reasonable fair maintainable trade at 1 April 2015 whilst reflecting the physical factors as they were at the material day the 30 June 2021, the date that the Valuation Officer increased the appeal property's assessment in the 2017 Rating List from £5,440 Rateable Value to £18,000 Rateable Value.

33. The Fair Maintainable Trade represents the annual trade considered to be maintainable having regard to the physical nature of the property and its location based on the assumption that the business would be conducted proficiently, by responding to the normal trading practices and competition in the locality. The percentages to be applied would vary according to the physical characteristics of the premises and the nature of the trade.
34. The Tribunal believed that the Valuation Officer has been fair and reasonable in its assessment of the appeal property which was supported by trading information formerly provided and declared by the occupier or its representative for 2017, 2018 and 2019.
35. Based on that trading information, the Valuation Officer analysed the trade taking into account the type of premises the appeal property is, the area in which it located and the services it provides to arrive at a fair maintainable trade. It then applied a percentage having regard to the property's 'pros and cons,' as highlighted by the appellant, along with comparable public houses.
36. The Tribunal was satisfied that the Valuation Officer had adequately reflected the characteristics of the appeal property when deciding in which category and band to place it for his valuation and that his proposed assessment of £18,000 Rateable Value was fair and reasonable.
37. The Tribunal was also aware that case law has established that the burden of proof rests with the appellant to show why the appeal property's assessment should be altered. The Tribunal was of the opinion that the appellant had not provided sufficient evidence to prove his case.
38. In conclusion, the Tribunal found that the current assessment applied to the appeal property was fair and reasonable and therefore determined that the appeal property should remain assessed at £18,000 Rateable Value, effective from 30 June 2021 and dismissed the appeal.