

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Paul A Ellard

Appeal property: Unit 3, Catherine Court, Hawarden Industrial Estate, Manor Lane, Deeside, CH5 3NU

Appeal number: 683530723720/192NV17/45

Date of Appeal: N/A

The Matter Appealed against: Non-domestic rating appeal

Date of Hearing: 5th February 2019

Appearances: Mr P Ellard (Appellant)

Date of Decision: 11th February 2019

Decision of Tribunal: Dismissed

Members of the Tribunal: Ms R W Hughes (Chairperson), Mr C J Newman & Mr R C W Handy

Tribunal Clerk: Mr J Evans

Introduction

1. On 8th May 2018, the Valuation Officer received a proposal to alter an entry in the Non-Domestic Rating List in respect of Unit 3, Catherine Court, Hawarden Industrial Estate from the appellant ratepayer, Mr P Ellard.
2. The Rating List displayed the appeal property as a workshop and premises which comprised ground and first floor accommodation.
3. In making his proposal, Mr Ellard sought a reduction in the existing level of Rateable Value (RV) of £10,000 to £1.00 RV with effect from 1st May 2018 on the grounds that there had been a material change of circumstances brought about by the decommissioning of a staircase that linked the ground and first floor mezzanine.
4. Since the VO did not agree to alter the list to the extent the appellant had sought for in his proposal, the matter was remitted to the Valuation Tribunal for Wales according to Regulation of the Non-Domestic Rating (Alteration of List and Appeals) (Wales) Regulations 2005, as amended.
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.

Summary of the appellant's case

6. In his evidence, Mr Ellard drew to the tribunal's attention the nature of the use he had put to the subject property and why he had removed the staircase access to accommodation on the mezzanine floor.
7. Mr Ellard said that the position of the staircase meant that he was unable to maximise the ground floor accommodation which was used to store cars and other vehicles. He said that if the staircase remained in situ, the amount of space that could be used to store cars halved to about 4 or 5 cars whereas 10 cars currently occupy the same space.
8. Mr Ellard confirmed that the staircase could be re-erected within a couple of hours but maintained that to have the stairs there did little to improve the practicalities and aesthetic qualities of the ground floor use. Moreover, he made no use of the mezzanine floor but was aggrieved that he should have to pay rates in respect of this space.
9. In view of the foregoing, Mr Ellard asked the tribunal to reduce the Rateable Value.
10. In her evidence, Mrs Jones provided details of her credentials and years of her rating experience. Mrs Jones was authorised to appear before the tribunal in respect of this case as both advocate and expert witness.
11. There was no dispute between the parties that the mezzanine floor was still in situ although Mr Ellard had removed the wooden staircase and stored it on the first floor. Mrs Jones said that despite the fact Mr Ellard had decided not to use the mezzanine accommodation, she was unable to reflect this in her valuation.
12. In support of this, Mrs Jones referred to a passage from the Lands tribunal judgment of *Williams (VO) v Scottish Newcastle Retail Ltd and Allied Domecq Retailing Ltd* which expounded the rating virtue that one must value the hereditament under consideration in its actual physical state as it stands in accordance with the "*rebus sic stantibus*" rule.
13. Mrs Jones said that the correct approach to factor in the removal of the staircase was to examine whether, in the context of the hereditament, a reasonable onlooker might regard the works, which the appellant had undertaken, as minor. On the facts of this case, Mrs Jones considered that a reasonable onlooker might have concluded that the staircase could have been reinstated with minimal adaptation. Whilst Mrs Jones accepted that Mr Ellard had no intention to use the accommodation situated on the mezzanine floor, she said, with reference to *SJ & J Monk v Newbiggin (VO)*

[2017], that the Valuation Officer could not take into account the subjective intention of the ratepayer.

14. Mrs Jones said that in the case of 2010 rating List appeals a technical presumption was placed on the appellant and which required that he or she proved their case in order to justify an alteration to the list. In support of this Mrs Jones referred to an extract from *Vines Ltd v de Mauny* (VO) which related to on whom the burden of proof rested. The court reminded the parties that since the appeal had been brought by the ratepayer rather than the VO and the burden of proof rested with the ratepayer to show that the list entry was incorrect.

15. Mrs Jones' valuation of the subject property was set out as follows -

Floor	Description	Area m ² /unit	£ / m ² /unit	Value (£)
Ground	Workshop – Unit 3	77.15	42.90	3,310
Ground	Office/ WC/ Ktn	18.36	47.19	866
First	Office	16.73	47.19	789
Mezzanine	Internal storage – Unit 3	97.45	21.45	2,090
Ground	Area under supported floor	97.45	30.03	2,926
	Plant & Machinery			55
				10,036
				Say RV £10,000

16. In her evidence, Mrs Jones referred to an earlier valuation of the same property. Whilst the resultant RV in the new valuation was the same as it was previously, Mrs Jones had applied slightly different values to component parts.

17. In view of the foregoing, Mrs Jones asked the Tribunal to dismiss the appeal.

18. At the conclusion of the hearing, the Tribunal decided to reserve its decision.

Decision of the Tribunal

19. Having considered all of the evidence placed before it, the Tribunal decided to dismiss the appeal. In arriving at its decision, the Tribunal gave the following reasons –
20. The Tribunal was mindful of the rating legislation laid down by Parliament. Schedule 6 of The Local Government Finance Act 1988, as amended by section 1(2) of the Rating (Valuation) Act 1999 defined rateable value of a non-domestic property as taken to be the amount equal to the rent at which it was estimated the property might reasonably be expected to let on a year to year basis on 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 state to command the rent mentioned above.*
21. The valuation date (AVD) was set by the Rating Lists (Valuation Date) (Wales) Order 2014. For the purposes of the 2017 Rating List, the AVD is 1st April 2015. For rating purposes, the AVD is the day by reference to which the rateable values of non-domestic hereditaments are to be determined for the purposes of local and central non-domestic rating lists which are compiled for Wales on 1st April 2017.
22. Under the terms of the rating hypothesis, the Tribunal had regard to a hypothetical situation where a property was vacant and available to let on the market at the antecedent valuation date (AVD) of 1st April 2015. On that day the Tribunal took account of economic factors and the state of the property market at that time. However, physical matters of the property and its locality were taken as they were on the material day.
23. In cases such as this, case law indicated that the burden of proof rested with the ratepayer rather than the Valuation Officer. To help illustrate this point, Mrs Jones referred to *Vines Ltd v de Mauny (VO)*. As a corollary, the Tribunal understood that there aspects to the burden of proof existed: the persuasive or legal burden, which is general and is surmised in the maxim he who asserts must prove: and the evidential burden which is specific and requires a party wishing to put a fact before the tribunal to prove it, usually by evidence. It was evident to the Tribunal that the persuasive burden in this appeal was placed on the ratepayer as appellant(s) and not

upon the Valuation Officer by virtue of a statutory duty to prepare and alter the Rating List.

24. The crux of Mr Ellard's case concerned an amount of value attributed to an area of the property he did not use. He considered that this had placed an unfair financial burden upon him. Whilst Mr Ellard had clearly and concisely set out the reasons as to why he sought an alteration to the list, he had not supplied the Tribunal with evidence of sufficient quality to justify the reduction he contended for in his proposal.
25. At the material day, the tribunal accepted that the work required to reinstall the staircase was minor. The Valuation Officer's representative had advanced this point in her evidence and, in his summing up, Mr Ellard had accepted as much. Consequently, the Tribunal accepted Mrs Jones' point that with minimal adaptation, the staircase could be simply reinstalled.
26. The Tribunal recognised that the nature of Mr Ellard's business meant that he had little use for the mezzanine. However, the Tribunal could not take into account of a ratepayer's subjective use of the property nor of his intentions and was bound to follow the findings of the higher courts which affirmed this principle.
27. On the face of it, the Tribunal considered that the valuation for the subject property appeared fair and reasonable. Although the Tribunal had considerable sympathy for the appellant, it could not justify a reduction in the RV for the reasons he advanced in his evidence. As a corollary, the Tribunal upheld the Valuation Officer's contentions and dismissed the appeal.

Certified a true copy on 11th February 2019