

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Mr L Nichols

Appeal property: 69, Newton Road, Mumbles, Swansea

Appeal number: 685529707217/NV17

Date of Appeal: N/A

The Matter Appealed against: Disputes accuracy of entry in 2017 Rating List

Date of Hearing: 14th February 2019

Appearances: Mr Williams (Mr Nichol's partner)
Mr M Rees (for respondent Valuation Officer)

Date of Decision: 7th March 2019

Decision of Tribunal: Appeal dismissed

Members of the Tribunal: Mr K Leighfield (Chairperson), Mr A E Sangster & Mr D R Shopland

Tribunal Clerk: Mr J Evans

Introduction

1. On 11th September 2017, the Valuation Officer received a proposal to alter an entry in the Non-Domestic Rating List from Mr Nichols which he lodged in respect of a shop and premises he occupied on 69, Newton Road, Mumbles, Swansea.
2. In making his proposal, Mr Nichols sought a reduction in the existing level of Rateable Value (RV) of £12,000 to £7,000.00 RV with effect from 1st June 2017. However, as the VO did not agree to alter the list to the extent the appellant had sought 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.
3. 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

4. In his reasons for making the proposal, Mr Nichols referred to the following points –
 - a. The price per square metre was excessive
 - b. The new retail developments at the village had decimated footfall
 - c. That independent advice suggested that valuation of the shop should be reduced accordingly
5. In his evidence, Mr Williams explained that the underlying level of value the Valuation Officer applied to properties at the foot of Newton Road was the same as those situated further up the road. Mr Williams contended that the properties at the bottom of Newtown Road were more greatly advantaged by their proximity to Mumbles Road, car parking (which was absent near the appeal property), café culture and coastal hot spots. As a consequence, a lower level of Zone A value should be attributed to properties, like the appeal property, which were further away from Mumbles Road.
6. Mr Williams referred to other retail locations inside Swansea such as Morriston, Uplands and Sketty whose underlying levels of value were below that of Newton Road. He referred to the underlying level of values attributed to these shops (for e.g. a shop in Lower Oxford Street had a Zone A value of £175/m² and shops in Sketty had a Zone A value of £240/m² and £300/m²). He also referred to vacancy levels in retail outlets on Newton Road was about 25%.
7. Mr Williams explained that properties situated on Mumbles Road had reductions in their rateable value to reflect disturbances caused by roadworks.
8. With reference to Goad Plans and Ordnance Survey maps, Mr Rees identified the appeal property in respect to the Mumbles area and of its position on Newton road. He provided a copy of the proposal which gave rise to the appeal as well as to the appeal history of the subject property and details of its passing rent.
9. Mr Rees provided an extract of Schedule 6 of the Local Government Finance Act 1988 and the definition of Rateable Value which underpins any non-domestic rating valuation. The definition of Rateable Value was set out as follows –

The rateable value of a non-domestic hereditament ... 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. Mr Rees also pointed out that for the purpose of undertaking a valuation regarding an entry in the Non-Domestic rating list that came into force of 1st April 2017, he was required to take account of economic factor that arose on 1st April 2015 and of physical factors that were in place on 1st April 2017. Consequently, physical changes to the property or the locality in which it was situated that transpired after 1st April 2017 could not be dealt with on this proposal.
11. The appeal property was a ground floor shop at the top end of Newton Road. The appellant company, Hanley Interiors, acquired the lease in June 2017 and paid a rent of £12,000 per annum. Mr Rees said that prior to the appellant company's lease, the property had been let to another company at a rent of £15,400pa with effect from 1st April 2014.
12. Mr Rees said that appeals made by a number of other ratepayers on Newton Road made on the grounds of incorrect value had been either withdrawn or agreed.

Decision of the Tribunal

13. 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 –
14. In considering the Rateable Value the Tribunal had regard to the statutory definition of Rateable Value as set out in Schedule 6 of the Local Government Finance Act 1988 (as amended). The Tribunal understood that this statutory definition of Rateable Value referred to a rent agreed between a hypothetical landlord and tenant. Under the rating hypothesis, a property had to be valued vacant and to let and assumed to be in a reasonable state of repair. In addition, the Tribunal could not take account of the individual circumstances of the occupier's use of the property, nor could it take into account the appellant's business. The rental value arrived at had to represent the figure at which the hypothetical landlord and tenant would be likely to agree following negotiation. In considering any rental evidence the Tribunal was mindful that it had to consider the economic climate that existed as at the antecedent valuation date of 1 April 2015.

15. Rating case law had set out several propositions which considered what weight should be given to certain types of evidence when determining a property's RV. Considering the statutory definition of RV, it was clear that evidence of relevant rents tended to attract the most weight, where that was derived from the subject property itself or from other comparable properties in a similar location. Moreover, the nearer the date that such rental evidence became effective to the antecedent valuation date and the closer the terms of such a letting are to those required under the rating hypothesis, the more weight such evidence has. Regarding the passing rent nearest the AVD which had commenced in April 2014, the Tribunal noted that it was well above the Rateable Value of £12,000.
16. In cases of this nature, the burden of proof in this appeal rested with the ratepayer as appellant(s), not the Valuation Officer by virtue of his statutory duty to prepare and alter the Rating List.
17. Whilst Mr Williams contended that a reduction should be allowed to reflect certain disadvantages that were not shared by properties situated at the bottom of Newton Road and on Mumbles Road itself, the Tribunal was not presented with evidence of sufficient quality to show that the underlying level of value the Valuation Officer had applied to virtually everything in the immediate area of the subject property at £400/m² was incorrect. All of the shops on Newton Road had an underlying level of £400/m². Moreover, the Tribunal attached weight to Mr Rees' settlement evidence which indicated that several other properties on Newton Road had accepted a Zone A value of £400/m².
18. Whilst the Tribunal acknowledged Mr William's comments about the number of vacant units (some 25%) on Newton Road, there was no evidence before the Tribunal to suggest that this level was remarkable. The Tribunal also attached no weight to the Zone A values attached to properties situated outside of Newton Road. The RV attributed to those properties reflected different advantages and disadvantages and it was clear from the level of Zone A values attributed to Newton Road that this area was more valuable than others. Whilst the Tribunal accepted that other areas tended to have greater footfall than Newton Road, it was clear that the rental values gained from across the immediate area had ultimately dictated the Zone A value for Newton Road.
19. The Tribunal also took into account of comments Mr Nichols' made in his proposal which referred to independent rating advice which concluded that the level of value for the shop was incorrect. Unfortunately, Mr Nichols had not provided the Tribunal with more details about this advice nor had he presented an alternative rating valuation to support the reduction he had sought.
20. In this appeal the Tribunal was limited to the scope of the appellant's proposal. In that proposal, Mr Nichols sought a reduction in Valuation with effect from 1st April 2017. The Tribunal was not permitted to consider any

material or physical changes that occurred after that date. Had the developments to Mumbles Road existed on or prior to 1st April 2017, then such matters would have been factored into this valuation. However, if such development or changes to the locality in which the subject property was situated, then these matters would have to be taken account of in a separate proposal.

21. In its conclusion, the Tribunal was satisfied with Mr Rees' explanation that the appeal property's Zone A value of £400/m² reflected the location of the property and was in line with the other shops in that area of Newton Road. As a corollary, the appeal was dismissed.

Certified a true copy on 7th March 2019