

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Fiona Jane Fenwick

Appellant's Address: Shop and Premises, Pantydwr Stores, West Street, Rhayader, LD6 5AB

The Matter Appealed against: 2017 Non-Domestic Rating List

Date of Hearing: 15 March 2019

Appearances: Mr Haroon Bhatti representing the Valuation Office Agency

Date of Decision: 4 April 2019

Decision of Tribunal: Appeal Dismissed

Members of the Tribunal: Mr D O Evans, Mrs J Worswick and Mr G E Evans

Tribunal Clerk: Mr R Williams

Introduction:

1. The subject appeal arises from a proposal submitted by the owner, Fiona Jane Fenwick, to the Valuation Officer (VO) on the 27 June 2018 challenging the entry of Shop and Premises, Pantydwr Stores, West Street, Rhayader, in the 2017 Non-Domestic Rating List.
2. The grounds of appeal as detailed in the subject proposal are reproduced in full as follows:
3. *"The rateable value altered to £8,100 with effect from 01/04/2017.*
4. *The rateable value was inaccurate when the property was revalued in April 2017.*
5. *My detailed reasons for believing the property value or details should be altered are: Pantydwr Stores is a well-presented commercial premises which has been actively marketed for letting since November 2016 without success. The letting agent is Morris Marshall & Poole with Norman Lloyd. The agent believes the lack of interest is that the premises is not in the main retail part of the street. Also, the pavement is narrow adjacent to the entrance and on a fairly steep incline with double yellow lines. The premises were previously let to a hairdresser/therapist, but this sort of business only really thrives in the busier part of town, so the business relocated. Planning permission is about to be submitted for change of use. With the difficulty in this area of a town for a retail premises to be successful, we question why the revaluation of the property was doubled in 2017."*

6. The following 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.

The Appellant's Case

7. The Clerk informed the Tribunal that the appellant returned a proforma form confirming she would not be attending the Hearing but wished for her appeal to be heard in absence by way of written submission.
8. The following correspondence was provided for the Tribunal's consideration and is reproduced in full as follows:
9. Letter from Fiona Fenwick dated 28 February 2019: *"I am questioning the calculated rateable value of £8,100 because of the following reasons:*
10. *From 2007, the ground floor only of the property was rented for £350 per month. This was a reasonable amount for the tenant to be paying and enabled him to run his business from the property successfully.*
11. *In 2011, after modernisation, the rent charged to a tenant for her Beauty Salon, using both the ground and first floor, was £700 per calendar month. Unfortunately, this level of rent was not sustainable for her business. The tenant had difficulty paying on time and in full. By November 2014 it was agreed between the landlord and tenant that she could only afford £350 per calendar month. She then subsequently had to give up the tenancy at the end of January 2015 with twelve months rent arrears owing. The monies were never paid and had to be written off.*
12. *A new lease was started in July 2015 at £750 per calendar month for a tenant setting up a health therapy business. The lease was given up in February 2016 because the rent was unsustainable for the business. The tenant left owing £1,000 and again this amount had to be written off.*
13. *Please also see attached letter from Morris Marshall & Poole, dated 20 April 2018, stating that the commercial positioning of Pantydwr Stores makes the property very difficult to let and also for any business to support a level of rent suggested by its rateable value.*
14. *I believe that the evidence that I have presented supports a reduction in the rateable value to a level of £4,200 which would be more in line with the rent that was paid for the premises between 2007 and 2010 and to which it was reduced in 2014 after trading difficulties. Again in 2015 when the aim was to achieve the higher rent, it proved to be uncommercial and the lease was ended.*

15. *In conclusion, the last two tenancies were not able to pay a rent that would have been in line with the rateable value and which is why I am challenging the valuation.*
16. *I look forward to hearing the result of the Tribunal's decision."*
17. Letter from Morris Marshall & Poole with Norman Lloyd dated 20 April 2018: *"Pant-y-Dwr Stores are well-presented commercial premises in the centre of Rhayader. The accommodation extends to approx. 70 sq m on the ground floor and 24 sq m on the first floor. There is parking to the rear.*
18. *Morris Marshall & Poole with Norman Lloyd are the appointed letting agent for the property and we have actively marketed it since November 2016, without success. Our marketing has covered the local press (County Times), the usual websites – Zoopla, Rightmove, On the Market and of course our own company website. In addition to this, the particulars have been prominently displayed in our offices in Llanidloes and since May 2017 in our new office in Rhayader – both in the windows and on the walls inside the offices.*
19. *To date there has been no interest. We believe that this is largely due to the fact that the premises are not in the main retail part of the street. Also, the pavement is narrow adjacent to the entrance door and it is not possible for motor vehicles to stop directly outside the front of the property because there are double yellow lines on the road. The premises were previously let to a hairdresser/beauty therapist, but this kind of business really only thrives when in the busier part of town so the tenant relocated.*
20. *We are available to discuss the property should you wish. Please call the number above if you feel this would be appropriate."*

The VO's Case

21. Mr Bhatti submitted copies of his presentation to the Tribunal which referred to the following legislation and case law:
 - Paragraph 2(1), Schedule 6 Local Government Finance Act 1988
 - The Rating Lists (Valuation Date) (Wales) Order 2007, SI No. 3153/2007
 - Vines Limited v de Mauny (VO) (2010)
 - Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA141
22. Also included were his response to the appellant's case; his legal argument; the definition of Rateable Value (RV) and the Antecedent Valuation Date (AVD); an appeal history; the valuation in respect of the appeal hereditament along with a line drawing and location plans.
23. He reported 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 as:

"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."*

24. The VO explained that the RV of a hereditament was an estimate of the rental value at the AVD, which for the 2017 Non-Domestic Rating List was the 1 April 2015, whilst having regard to the physical factors and physical setting as they were as at the Material Day, the 1 April 2017.
25. Mr Bhatti further explained that for the purpose of rating valuation, the hereditament must be valued on the assumption that the hereditament 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.
26. He informed the Tribunal that the appeal hereditament was located on West Street which consisted mainly of commercial properties, primarily occupied by sole traders, amongst some residential properties.
27. In the 2017 Rating List, the commercial properties located within West Street were valued at a Zone A rate of £140/m² with the appeal hereditament valued at a lower Zone A rate of £125/m² reflecting its location at the tail end of the commercial aspect. No other agreements or Valuation Tribunal decisions have occurred in respect of West Street.
28. The VO also reported that on the 31 July 2015, the occupier of the appeal hereditament informed the VO by a 'form of return' that the passing rent was £9,000 per annum. Previously the subject property was let at a rent of £9,000 with effect from 1 August 2011.
29. He also suggested that as the 2017 Rating List is nearing 2 years old, a tone was establishing for West Street which supports the current Zone A values.
30. In conclusion, Mr Bhatti highlighted that the rent passing in July 2015 of £9,000 was above the appeal hereditament's RV of £8,100 and the

differentials in Zone A value was reflected having regard to the subject property's commercial positioning at the tail end of West Street.

31. In view of the evidence he had provided, the VO requested confirmation of the appeal hereditament's current RV and that the subject appeal be dismissed.
32. Responding to questions from the Tribunal, Mr Bhatti confirmed the rental information detailed in the appellant's submission was that supplied by the former tenant in a 'form of return', which provided rental information to help assess the rateable value of the appeal hereditament. The information contained within the afore mentioned confirmed that the annual rent of £750 per calendar month was in excess of the current RV.
33. 'Ability to pay' cannot be taken into consideration when considering rating valuation, as the subject property had to be considered vacant and to let and regard cannot be given to the actual trade of the occupier.
34. At the conclusion of the hearing, the Tribunal decided to reserve its decision.

The Reasons for Decision

35. Having considered all the evidence placed before it, the Tribunal decided as follows: -
36. The Tribunal was aware that Non-Domestic property must be valued in line with the statutory definition of Rateable Value, as contained in paragraph 2(1) of Schedule 6 of the Local Government Finance Act 1988, as amended by Section 1(2) of the Rating (Valuation) Act 1999, and in accordance with The Rating Lists (Valuation Date)(Wales) Order 2007, Statutory Instrument No: 2007/3153 (W269), which determined that the appeal hereditament must be valued by having regard to rental values achieved at the Antecedent Valuation Date, 1 April 2015, whilst looking at the physical circumstances of the property at the Material Day, 1 April 2017.
37. It was also aware that the appeal hereditament must be assumed to be "vacant and to let" and cannot have regard to the actual trade of the occupier and that it was important to ascertain whether a tone of value had been established.
38. Whilst appreciating the issues raised by the appellant, the Tribunal was aware that in accordance with relevant legislation, issues that affect a particular occupier cannot be considered, as the appeal hereditament must be valued as vacant and to let. Therefore, an individual's trading circumstances are not always relevant, although they may be an indication of general issues, if supported by a similar effect on other businesses within that location. The fact that no other proposals or appeals had been made by other ratepayers within West Street appeared to support the

Valuation Officer's contention that a 'tone of the list' was being established since the introduction of the 2017 Non-Domestic Rating List.

39. In the instant appeal, the Tribunal determined that the Valuation Officer's summary of unit rates within West Street, persuaded in favour that the lower unit rate adopted in terms of Zone A at £125 metre square for the appeal hereditament was not excessive having regard to its poorer location, in comparison to the other better located properties valued at the higher unit rate of £140 metre square in the main retail part of the street.
40. Referring to the statutory definition of Rateable Value and the Lands Tribunal judgement in *Lotus & Delta v Culverwell (VO) and Leicester City Council (1976)*, the Tribunal was mindful that the best evidence was provided by rents synonymous with the statutory definition, passing on the subject property and which required little or no adjustment. The Tribunal was aware of the rent passing on the appeal hereditament at £9,000 per annum effective from 31 July 2015, 4 months post the Antecedent Valuation Date, which in accordance with the principles of the Lands Tribunal case, was the best evidence available. It also noted that the rent passing was in excess of the appeal hereditament's Rateable Value of £8,100.
41. Whilst sympathetic to the appellant's situation, the Tribunal was bound by the legislation and the Regulations governing the approach to determining the Rateable Value of Non-Domestic property within the 2017 Rating List.
42. The Tribunal was also mindful of the High Court of case of *Vines Ltd v De Mauny (VO) (2010)* which provided guidance that it was for the appellant to demonstrate that the existing assessment was incorrect and not for the Valuation Officer to prove that it was right.
43. Accordingly, and in line with the evidence presented, the Tribunal confirm the current entry in the 2017 Non-Domestic Rating List in respect of the Shop and Premises, Pantydwr Stores, West Street, Rhayader, LD6 5AB, at £8,100 Rateable Value with effect from 1 April 2017 and therefore dismiss the appeal.

Certified a true copy on 4 April 2019.