

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Mr Richard Dyke-Price (Owner)

Appellant's Address: Montague Burton Ltd, 48-50 High Street, Rhyl LL18 1ET

Appeal number: 683030695978/541NV17/11

The Matter Appealed against: 2017 Rating List

Date of Hearing: Wednesday 24 July 2019

Appearances: Mr Richard Dyke-Price
Mr Owain Wynn-Cowell for the respondent Valuation Officer

Date of Decision: 23 May 2019

Decision of Tribunal: Appeal Dismissed

Members of the Tribunal: Mr Rh Prytherch (Chairperson)
Mr W P Bagnall
Mr A Hinchliff

Tribunal Clerk: Mrs C Jones

Introduction:

1. Mr Dyke-Price made a proposal to alter an entry in the 2017 Non-Domestic Rating List in relation to the appeal hereditament, shop and premises, 48-50 High Street, Rhyl. The Valuation Officer (VO) received the proposal on 20 April 2018 and in making his proposal, the appellant sought a reduction in the appeal hereditament's entry in the Rating List from £50,000 to £28,000 with effect from the 1 April 2017.
2. 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.

Summary of the Appellant's Case

3. Mr Dyke-Price confirmed that as things had moved on since he had submitted the appeal proposal, he could no longer support his original valuation of £28,000 Rateable Value (RV). He was now asking the Tribunal to consider reducing the RV to £15,250 per annum.
4. He contended that over the last 8 to 10 years, the impact of on-line shopping, the opening of Parc Prestatyn and other off-centre retail units had resulted in the increase of empty units in Rhyl town centre. During

this time, new occupiers mainly consisted of charity shops, discounters and temporary trades, all on heavily incentivised terms, which negated the concept of open market rental evidence.

5. Mr Dyke-Price stated that over the last 8 to 10 years there were no retailers who would trade across two floors in Rhyl. He believed for the appeal hereditament to have been let in April 2015, consideration would have had to be given to voiding the second floor and part of the first.
6. The appellant told the Tribunal that a passing rent of £80,000 p.a. was agreed in January 1993, which had no relevance to the rental value as at the 1 April 2015, some 22 years later. The lease was for 25 years and despite an upwards only rent review, the rent was never increased. He noted also that tenants such as Marks & Spencer, Next, Top Shop, Mothercare, Dixons, Clarks, Goldsmiths, Evans ladies wear and JJB Sport were all in the town centre at the time and all had vacated.
7. He stated that since 2008/10 the market for global rents of £30,000 - £50,000 p.a. did not exist for High Street units in towns such as Rhyl. The trend had been away from larger units. He argued that no tenant would have leased a property of 637.35 sq.m in the centre of Rhyl High Street at a rent above £15,000 p.a. in April 2015.
8. In order to factually support this view, Mr Dyke-Price stated that 37 High Street, Rhyl was let in March 2013 to W.H. Smith at a Zone A value of £103 and was re-let again in July 2017 at the same rental. This factor underlined the tone of the list for a property of this size (344 sq.m). However, the appeal property was 85% larger at 6,858 sq. ft. Mr Dyke-Price could not see how the appeal property would attract a higher rental value per sq. ft. than W.H. Smiths.
9. The appellant told the Tribunal that the VO had recently agreed the Rating tone of the list with Paul Coope of GL Hearn Ltd, acting for the Rating Surveyor's Association (RSA), at £200 Zone A. The tone of the list essentially determines what a hypothetical standard unit in a certain location would let for in the open market. A standard unit was 18' x 60' with the same cover at the first floor. The appeal property was 3 times the size of a standard unit and to arbitrarily apply a percentage discount to reflect size did not bear any relation to the reality of the marketplace. In the market since 2010/12, it was sadly an assessment of how low you have to go to find a tenant and not take the tone of the list and apply a 15, 25, 50 or 75% discount to result in the correct market rent or indeed a letting. Mr Dyke-Price argued that whilst tone of list generally worked for standard units, it failed when it came to one-offs which in his opinion should be considered in isolation because of their advantages or in this case disabilities.
10. Mr Dyke-Price addressed the VO's 15% discount for size that had also been applied in Wrexham. He argued that applying or relying on percentages to prove a rental was pointless and it was rather what a particular property would let for in the open market at a certain point in

time. Arcadia trading as Burtons and Dorothy Perkins had offered nil rent to stay in the appeal property with rolling breaks of 4 months. This demonstrated their view of the unit's likely profitability and the marketplace generally. The property had been on the market since January 2017 to sell or let and no rental offers had been received whatsoever.

11. Mr Dyke-Price drew the Tribunal's attention to 56 High Street, Rhyl which was a few doors from the appeal property and half its size. This property was vacant long before April 2015 and had not found a tenant at any price since. He said that it was the rental judgement he disputed and the fact that the market for units of this size in towns such as Rhyl was non-existent despite heavily discounting the rent.
12. The appellant told the Tribunal that he had used the evidence of the only recent sizeable letting to WH Smith at 37 High Street in his valuation at £103 Zone A. He explained that he had accepted the VO's areas but differed in the application of the appropriate Zone A's. Accepting that there were no tenants in April 2015 taking units of this size or trading across two floors in towns of this scale. He had voided half the first floor and discounted completely the second floor and applied 15% of Zone A for first floor storage of £16.14 per sq.m. to assume sales in this area was simply a non-starter. His suggested RV is set out below: -

Zone A	68.03 x £107.60 =	£7,320.03
Zone B	63.84 x £53.80 =	£3,434.59
Zone C	67 x £26.90 =	£1,802.30
Remainder	10.62 x £10.76 (at a tenth, no-one would pay an eighth A) £1	£ 114.27
Rear Storage	9.56 x £16.14	£ 154.00
1 st Flr	212.9 sq.m treated as storage & area halved – 106.45 x £16.14 £1	£1,718.10
Second Flr	205.3 – Nil Value =	£ 0.00
3 car parking spaces =		£ 750.00
Total area – 637.35 sq.m		<u>£15,293.29</u>

Altered Rateable Value - £15,250 p.a.

Summary of the VO's Case

13. Mr Wynn-Cowell explained to the Tribunal that there were many points of agreement between himself and the appellant. He was respectfully asking that the Tribunal order a reduction to £28,750 RV from the 1 April 2017.
14. He explained that the current RV on the appeal property was £50,000 and the appeal was a compiled list appeal with an effective date of the 1 April 2017, based on a shop/zoned approach applying £325 Zone A.

15. Mr Wynn-Cowell stated that it was worthwhile to look at the 2010 Rating List. The compiled list appeal against the 2010 valuation was agreed at £82,500 based on a Zone A of £555. To reflect the size of the property a survey unit discount of 4% was applied. This was agreed with Allsop LLP for The Arcadia Group Ltd. The 2010 valuation was later reduced to an agreed value of £69,500 to reflect the opening of Parc Prestatyn Retail Park on the 3 March 2013. A value significant Material Change of Circumstance (MCC). The total discount for the MCC of 17.5%, in addition to the 4% discount for size.
16. The VO argued that a 15% discount for size in 2017 should apply. This was greater than the 4% discount agreed with Allsop LLP (Arcadia) in 2010. He was applying the same methods of valuation as the 2010 valuation which was zoning. He was also applying £200 Zone A, a reduction on the original £325 Zone A as shown in his valuation below: -

Description	Basic Relativity	Area/Units	Compound Factor	Price Adopted	Line Value
Retail Zone A	1.0000	68.03	1.0000	200.00	13606
Retail Zone B	0.5000	63.94	0.5000	100.00	6394
Retail Zone C	0.2500	67.00	0.2500	50.00	3350
Remaining Retail Zone	0.1250	10.62	0.1250	25.00	266
Internal Storage	0.1000	9.56	0.1000	20.00	191
Retail Area	0.1000	212.90	0.1000	20.00	4258
Internal Storage	0.0400	205.30	0.0400	8.00	1642
Total Actual Area of SU:		637.35	Total before Adjustments:		29707
SU Adjustments:					
SIZE OR QUANTITY ALLOWANCE 15%:					4456
			25251		
Other additions:					
Air Conditioning System:					2980
Car Parking:					750
Total before Adjustments:					28981
End adjustments:					
Compound Factor:					1.0000
Total RV:					28981
Rounded RV:					28750
Adopted RV:					28750

17. Mr Wynn-Cowell explained that a reduction to £200 Zone A for this part of the High Street had been agreed following extensive discussions between the VOA and the Rating Surveyor's Association (RSA) represented by Mr Paul Coope of GL Hearn. He stated that three appeals on High Street Rhyl, which were listed on this Tribunal, had been agreed based on a £200 Zone A figure.
18. Mr Wynn-Cowell said that the appellant may frame the dispute in a different way to the VO, nevertheless he was arguing that the dispute can be seen to turn on the quantum of the percentage discount for the size of the shop. He submitted that the increase to 15%, from the historic 4% was fair and reasonable.
19. In similar circumstances appeal 30660055 was recently agreed with North Block Ltd at 23/24 Hope Street, Wrexham where a 15% discount for size was agreed.
20. In conclusion of his evidence Mr Wynn-Cowell stated that at the Antecedent Valuation Date (1 April 2015) the passing rent between Arcadia and the landlord was £80,000. Arcadia vacated the property at the end of their lease in 2017. He understood that the rent was increased to £80,000 at a rent review in January 2003 and remained unchanged until the termination of the lease (25 Years from Dec 1992). No weight had been attached to this rent.
21. At the conclusion of the hearing, the Tribunal decided to reserve its decision.

The Reasons for Decision

22. Having considered all the evidence placed before it, the Tribunal decided to dismiss the appeal. In arriving at its decision, the Tribunal gave the following reasons.
23. It made its decision having regard to the prevailing legislation: Schedule 6 of the Local Government Finance Act 1988.
24. Mr Dyke-Price had contended that the Rating List was inaccurate and that the RV for the appeal property should be reduced to £15,250. In cases such as this higher court authorities had accepted that the burden of proof rested with the appellant on the basis that 'he who asserts must prove.' Moreover, it was an accepted tenet of law that any assertions made before a Tribunal should be underpinned by evidence. Therefore, in the case under consideration the persuasive burden of proof rested with the appellant ratepayer and not the respondent Valuation Officer by virtue of a statutory duty to prepare and maintain the Rating List.
25. The Tribunal believed the appellant had not been able to sustain his argument that the assessment was incorrect and had not, with reference to evidence, undermined the Valuation Officer's valuation of the property. The Tribunal believed that Mr Wynn-Cowell had correctly valued the

property taking into account the whole shop area, on the assumption that the hereditament was empty and to let. Under the same assumption the Tribunal saw no reason to disregard the second floor as contended for by Mr Dyke-Price.

26. The Tribunal accepted that the unit value of £200 for Zone A used by Mr Wynn-Cowell in his valuation of the property was in line with the settlement evidence agreed between the VOA and the agent of the ratepayers located on the High Street in Rhyl. The unit's size had been reflected in the 15% allowance and the resulting revised assessment of £28,750 was fair and reasonable.
27. Although the Tribunal was sympathetic to the plight of the appellant and appreciated the tough trading conditions faced in the area, it did not believe that any hard evidence had been provided to justify such a reduction in the property's rateable value.
28. With this in mind, the Tribunal decided to allow the appeal but only to the extent conceded by Mr Wynn-Cowell in his valuation. As such, the Tribunal orders the Valuation Officer to amend the Rating List with its decision.

Certified a true copy on August 2019