

UPPER TRIBUNAL (LANDS CHAMBER)



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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

RATING – valuation – 2010 list – self catering holiday cottages – comparable assessments – valuation approach – re-assessment by VO – appeal dismissed on grounds stated, but RV reduced from £7,400 to £5,900 on VO’s re-assessment

IN THE MATTER OF AN APPEAL AGAINST A DECISION
OF THE VALUATION TRIBUNAL FOR WALES

BETWEEN

MONICA CALVER

Appellant

and

ELIZABETH THOMAS BSc (Hons) MRICS
(Valuation Officer) Respondent

re: Castle Cottages, Manorbier, Tenby SA70 7 SX

Before: P R Francis FRICS

Sitting at: Carmarthen County Court, Hill House, Picton Terrace,
Carmarthen SA31 1BS

on
28 August 2013

Mr Lewis Malcolm Calver, on behalf of his wife, the appellant.
Ms Elizabeth Thomas, Valuation Officer, for the respondent

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The following cases are referred to in this decision:
Dennett v Crisp (VO) [2013] UKUT 35 (LC)

DECISION

Introduction

1. This is an appeal by the ratepayer, Mrs Monica Calver, against a decision of the Valuation Tribunal for Wales (VTW) dated 17 December 2012 confirming the assessment in the compiled 2010 rating list of a terrace of three self-catering holiday units (SCHU) known as Castle Cottages, Manorbier Tenby SA70 7SX at RV £7,400. The ratepayer contended that the VTW had not taken sufficient account of the appellant's evidence before it and had unquestioningly accepted the VO's evidence and valuation. That valuation, being assessed as it was on the notional (quasi-receipts) method which, whilst it was acknowledged to be an easy way for the VO to undertake an assessment, failed to reflect important differences and produced an unacceptable result that was full of inconsistencies. The appellant contended, as she had done before the VTW, for RV £4,500.

2. The appeal was conducted in accordance with the Tribunal's simplified procedure. Mr Lewis Malcolm Carver appeared on behalf of his wife and gave evidence. Ms Elizabeth Thomas BSc (Hons) MRICS, Valuation Officer, appeared in person and provided expert evidence under oath. On the day prior to the hearing I carried out an inspection of Castle Cottages both internally and externally together with a number of the comparables relied upon by each of the parties in the company of Mr Calver and Ms Thomas.

3. The material day and the effective date for the assessment is 1 April 2010 and the antecedent valuation date is 1 April 2008.

4. In the light of the arguments that had been set out in the claimant's statement of case, the VO conducted a full review of the available comparable evidence in accordance with the recommendations set out in the Valuation Office Agency's Practice Note 1: 2010 Holiday Accommodation (Self Catering) whereby comparisons were made on the basis of Single Bed Spaces (SBS) as defined therein. This was the basis upon which the original assessment had been made but she also undertook a full Receipts and Expenditure (R&E) valuation (formerly known as the profits method) as a check. Ms Thomas's conclusion was that the assessment should be amended to RV £5,900. In her reply, therefore, she sought either dismissal of the appeal or a reduction to said £5,900.

Facts

5. Ms Thomas had produced a draft statement of facts and issues, but this was not agreed in its entirety by the appellant. From those parts of that statement that were clearly not in dispute together with the evidence and my inspections, I find the following facts. Castle Cottages comprise a terrace of three traditionally constructed two-storey self contained dwellings located in the centre of Manorbier, an attractive seaside village approximately seven miles from Tenby

on the south Wales coast. There is a church together with local shops including a general store and tea rooms within a few steps of the cottages, and a public house.

6. The cottages were built by Mr Calver in about 1990 and are finished with roughcast render under traditional slated roofs. No. 1 comprises living/dining room and kitchen at ground floor, together with 2 bedrooms and a bathroom at first floor. Nos 2 & 3 are similar although each has three bedrooms. The centrally heated properties are set back from the village street, share areas of communal lawned and terraced gardens to the rear, and each has a single off-road parking space. Being in the centre of the village, there are no sea views.

7. At the material day, Castle Cottages, which are rated as a single hereditament, provided a total of 14 single bed spaces (SBS) arranged as follows:

| | |
|--------------------------------------|----------|
| 1 Castle Cottages (Bramble Cottage) | Sleeps 5 |
| 2 Castle Cottages (Primrose Cottage) | Sleeps 5 |
| 3 Castle Cottages (Clover Cottage) | Sleeps 4 |

The VTW decision.

8. It had been argued by the ratepayer that each of the cottages should be individually assessed as a separate rateable unit, thus triggering small business rates relief. The VO was of the view that the appeal hereditament had been correctly entered as a single contiguous rateable unit, that basis being supported by a large number of settlements and tribunal decisions. The VTW concluded that, apart from two of the comparables that had been rated individually and which were being “looked into” by the VO, the weight of evidence supported the VO’s basis of assessment.

9. As to the valuation method, the VTW said, at paragraph 36:

“In the absence of any competing or alternative method of valuation, or submission of details of properties’ receipts and expenditure, the Tribunal accepted the weight of the VO’s ‘bed space valuation’, i.e. using the quasi-receipts method. In closely analysing all the comparables (both the appellant’s and the VO’s), the bed space valuation was the only method for which there was evidence put before the Tribunal. The appellant did not provide the Tribunal with any alternative method of valuation.”

10. In response to the ratepayer’s arguments relating to competition from similar businesses, the tribunal concluded that they were not relevant to their deliberations because under the relevant legislation, a hereditament was to be valued as it stands, ‘vacant and to let’ – *rebus sic stantibus*.

11. In conclusion, the VTW said that having taken all the evidence into account, the VO's valuation was in line with the comparables, and did not appear unreasonable. The assessment was therefore confirmed at RV £7,400 and the appeal was dismissed.

The appellant's case

12. Mr Calver provided a lengthy statement of case, accompanied by a substantial portfolio of appendices, together with a supplementary statement responding to the VO's reply. A significant part of the documentation related to the early difficulties that had been encountered in trying to extract information from the original VO (a Mr Davies) to explain and support the basis of his assessment. Information had been sought particularly in respect of the background to the comparable assessments made under the SBS (notional or quasi-receipts) basis, but the VO had refused to release certain documentation under the provisions of the Data Protection Act. Mr Calver also complained that he had not been permitted to comment upon the additional information which had been provided by Mr Davies in response to the appellant's request at the VTW hearing - the extent of that additional material having been ratified by the VTW at the later site inspection. These difficulties, Mr Calver said, had put the appellant at a considerable disadvantage in preparing for this appeal, and he said that the only way he had been able to place Castle Cottages in context was through subjective comparison with other properties in terms of their size and location.

13. Mr Calver said that the effect of the 2010 revaluation was to double rateable values and this was a considerable blow to the industry, so much so that the WAG brought in transitional relief. He said that the VO at the VTW appeal had conceded that the introduction of this relief had had the effect of stemming the flow of appeals. However, because the appeal hereditament was rated as a single unit, it fell outside the relevant banding, with the result that the appellant was unable to compete with other holiday cottage complexes where the individual accommodation units had been rated separately. In such cases, even though the total RV of other comparable complexes might be more than Castle Cottages, because they were assessed individually, they became exempt from business rates. Although Mr Calver acknowledged that the VO's revised assessment of RV £5,900 that was before me meant that transitional relief would now apply, he said that when that relief ended, or thresholds were revised, Castle Cottages could end up being back in the same position.

14. It was submitted that the VTW's reasoning for accepting the VO's assessment of Castle Cottages as a single entry was flawed. Just because the VO had contended for it, and because the ratepayer appellant had not suggested what the individual RVs should be, was insufficient. It would have been easy, Mr Calver said, to calculate separate RVs just by dividing the cottages into three to produce a composite RV of £4,500. Also, the VTW's suggestion that because the three properties were all in the same ownership was a reason for accepting the VO's submission was unfair. It placed a single business person without a partner or family at a disadvantage against a family concern which might have split up ownerships to take advantage of multiple entries even though it might, in real terms, still be a single business.

15. One of Mr Calver's key arguments was that due to his rateable value being higher per bed space than much of the competition, he could simply not compete. For instance, Celtic Haven, which is an award winning complex of 25 cottages just down the road at Lydstep and has a wide range of facilities including leisure centre, pool, tennis courts, bar and restaurant and extensive grounds with coastal views and a private road to the beach, had RVs per bed space some 30% less. The 5 bed space units at Celtic Haven were £418 per single bed space, whereas the equivalent Castle Cottage was £550 (before the VO's re-assessment). There also appeared to be an inconsistency between the number of bed spaces shown on the VO website (122), and those shown in Celtic Haven's promotional material (140). Ivy Court Cottages at Llysyfran had an even larger differential - £380 per bed space – based upon its actual number of bed spaces (49) against those shown on the VO's website at 36. Those cottages also formed part of a larger complex, and had swimming pool and other facilities. It was hard enough, Mr Calver said, to compete against those businesses that were able to offer so much more to the holidaymaker without him also having to pay higher rates per SBS. The inconsistencies indicate, he said, how unreasonable it was for the VO to simply rely upon the notional method, and of the VTW to unquestioningly accept the VO's assessment.

16. Mr Calver accepted that his only comparative evidence was that gleaned from websites and advertising material from his competitors in the area and that his own assessment of RV £4,500 for Castle Cottages was not based upon any scientific analysis, but was just an amount which, in the light of the competition, "seemed fair." He said that the level of rateable values across the holiday cottage market in the area showed enormous variations which could not be explained, and certainly had not been adequately explained by the VO, and he therefore urged the Tribunal to set the RV at the reduced sum sought so that, in terms of this particular outgoing, he could at least compete on a level playing field.

Valuation Officer's case

17. Ms Thomas is a chartered surveyor who has worked as a rating surveyor in North Wales for 22 years. She said that, in connection with the 2005 and 2010 revaluations, she was responsible for determining the basis of value for SCHUs for the North Wales area, and was also a member of the "Class Co-ordination Team" that issued instructions for the valuation of this class of property throughout England and Wales. She said that, in addition to her existing role as non-domestic rating team leader for North Wales, she had recently taken over the lead role for SCHUs across the whole of Wales.

18. Having set out the relevant statutory provisions, Ms Thomas explained that the Form of Return (FOR) VO 6048 (10/11) which was sent to all operators of SCHUs had been specifically designed to extract the relevant details and had been amended to obtain fuller information in connection with the 2010 revaluation. She said that the vast majority of SCHUs were owned on a freehold basis, and consequently it was not possible to establish an appropriate valuation scheme based solely on rental evidence. For this reason, it was generally accepted that the most appropriate method of valuation for SCHUs was the receipts and expenditure basis – this having been considered in the recent Upper Tribunal (Lands Chamber) decision in *Dennett v Crisp (VO)* [2013] UKUT 035 (LC). A copy of the VO's internal instructions (Practice Note 1) was included as an appendix to Ms Thomas's report.

19. Ms Thomas said, however, that for the 2010 revaluation, it was acknowledged that the full R & E method could be misleading in respect of smaller units and complexes because, for instance, of the degree of commercialisation, the degree of personal use and/or the owner's individual tax motives – for instance pension initiatives or the use of Real Estate Investment Trusts (REITs). Discussions with holiday letting agencies had demonstrated that the preferred unit of valuation and comparison for this type of property is the single bed space (SBS) figure which is derived from the R & E analysis and applied back to all SCHUs.

20. Thus, it was confirmed that the SBS analysis was the primary comparator applied to all single SCHUs and smaller complexes (including Castle Cottages) for the 2010 revaluation. It also ensured that properties of similar type, in a given area, achieved a consistent level of value. This basis also reflected the fact that units having fewer bed spaces were, pro rata, more valuable than those that sleep more. Although it was unusual for the VO to obtain full accounts in respect of single SCHUs and small complexes, thus creating difficulties with a full R & E analysis, they had been provided by the appellant in this case, so Ms Thomas said that she had also undertaken a full R & E analysis as a check.

21. Firstly, as to the SBS analysis, Ms Thomas included at her Appendix 16, a valuation and analysis of tariffs and takings from a number of similar properties in and around Manorbier. Whilst it was acknowledged that many of them were single units, there being not many really similar complexes in the immediate vicinity, she said that this analysis demonstrated the range of SBS values, and that her assessment of Castle Cottages came towards the bottom end of the scale. For instance the individual properties at Ty Cariad and Carew Cottage, both within the village and each having 8 SBS were of generally better quality in terms of accommodation and fit out, and had better individual gardens.

22. She said that Lion House, Tudor Lodge Cottages and Lime Kiln Cottages were the closest complexes in terms of quality and comprise three, four and three units respectively. Lion House is an imposing three storey house converted into three apartments just down the road from Castle Cottages and adjacent to the village pub. They were previously shown as three individual entries but had been re-assessed now as a single entity for rating purposes – at RV £5,200. Despite being flats and having a total of 11 SBS, the income achieved and number of letting nights was in excess of those at Castle Cottages. The apartments analysed to £520, £520 and £420 per SBS respectively.

23. Tudor Lodge Cottages was an attractively laid out complex in a rural position a little way from the village, and comprised a complex of six mainly terraced cottages behind a pub/restaurant. Four of the units were assessed as SCHU with a total of 22 SBS and an effective date of 7 May 2011 at RV £10,500. The 6 SBS cottages were assessed at £470 per SBS and the 4 SBS unit at £550 per SBS.

24. Lime Kiln Cottages at Rock Farm, Jamieston, Near Manorbier were slightly farther away, but still within the parish. They comprised one detached and one pair of semi-detached single storey cottages converted from stone barns about 2 miles from the sea in a very rural

position approached along a narrow lane. These had a total of 9 SBS assessed at £520, £585 and £445 respectively giving RV £4,500.

25. The SBS rates adopted for Castle Cottages were £445 for the 4 bed space unit and £420 for each of the 5 bed space units.

26. In response to the appellant's reference to Celtic Haven, and particularly the SBS comparison, Ms Thomas said that because it was a very large complex with well over a hundred SBS, there had been a quantum allowance of 20%. This took the rate per SBS down from £550 to £440. She said that whilst businesses such as this could indeed offer more attractions in terms of facilities, the cost of providing them also had to be taken into account. She said that, in terms of her analysis and consideration of comparables, she had been careful to compare, as far as it was possible to do so, like with like. The rating hypothesis for somewhere like Celtic Haven would also be much more reliant upon an analysis of its accounts.

27. As to Mr Calver's reliance upon information relating to the rating assessments for the comparable properties as published on the VO website, and the apparent inaccuracies as to number of SBS, Ms Thomas said that the internet did not show how the individual bed space totals were analysed. For instance some of them would be sleeping accommodation in "Croglofts" – loft rooms accessed by ladder – where allowances had been made, and rooms with bunk beds where two beds would be taken as one SBS. The internet figure was only the end RV divided by the number of bed spaces. It would also not take account of any quantum allowance.

28. Ms Thomas summarised by saying that her re-analysis on the SBS basis did show the £7,400 accepted by the VTW to be too high, and that a full R & E analysis based upon the appellant's accounts fully supported her re-assessed figure of RV £5,900. Her SBS based analyses and the full R & E valuation were included as appendices to her report.

Conclusions

29. The difficulty I have with the appellant's case is that Mr Calver has proffered no calculations, analyses or evidence in support of his argument that the RV should be reduced to £4,500 other than that it was a figure that "seemed fair" in all the circumstances. The VTW made it abundantly clear in its decision (see the extract from paragraph 36 at paragraph 9 above) that it was relying upon the VO's bed space valuation on the grounds that there was no evidence proffered on any other basis.

30. I am satisfied that that the VTW's conclusions were correct and soundly based on the evidence that was then before it, and it cannot therefore be said that it was wrong. Further, the cottages were constructed as SCHUs, are in the same ownership and run as a business. They are, therefore, clearly a single contiguous business unit, and I cannot accept Mr Calver's arguments for having them assessed separately.

31. As to the revised assessment, Ms Thomas undertook a further analysis on both the SBS method and a full R & E valuation, and concluded that the resulting figures supported a lower assessment. I found her evidence to be well reasoned, clear and persuasive and also accept her responses to Mr Calver's concerns about the comparison with Celtic Haven and the apparent VO website anomalies. Particularly taking into account the SBS figures attributed to Lion House, Tudor Lodge Cottages and Lime Kiln Cottages, I am satisfied that the revised assessment is fair, and not out of line.

32. In conclusion therefore, the appeal on the stated grounds is dismissed. However, based upon the VO's revised assessment, which, as I have said, I accept, I direct that the assessment of the self catering holiday units at Castle Cottages, Manorbier in the 2010 rating list be amended to Rateable Value £5,900 with effect from 1 April 2010.

33. This appeal, having been conducted under the Tribunal's simplified procedure, and in the absence of any exceptional circumstances, I make no order as to costs.

DATED 26 September 2013

P R Francis FRICS