

Tribunal Decision

Appellant: CBRE Ltd agent for B&M Retail Limited

Appeal Address: Retail Warehouse and Premises, Unit 1 Port Road Retail Park, Culverhouse Cross, Cardiff CF5 6AE

Appeal number: 695030968921/285NV17/56

The Matter Appealed against: 2017 Rating List

Date of Hearing: 11th March 2020

Appearances: Mr J Towersey, agent on behalf of B & M Retail Limited, and Mr G Jones and Mrs S Harris, the Valuation Officers (VO) representing the Valuation Office Agency.

Date of Decision: 3rd April 2020

Decision of Tribunal: Appeal Dismissed

Members of the Tribunal: Mr B Fraser (Chair), Mr S Hennah and Mrs M Jones

Tribunal Clerk: Mrs M S Minty

Introduction:

1. The subject appeal arose from a proposal submitted by the above-mentioned Agent in respect of the subject property on the following grounds:

“We propose that the 2017 Rating List entry shown for the above property’s rateable value (RV) should be altered to £10 with effect from 12th March 2018. The alteration made by the Valuation Officer and notified by notice dated 30th July 2018 was inaccurate because the RV was incorrect, excessive and bad in law”.

2. 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 Evidence presented

3. Mr Jones stated his qualifications and duties to the Tribunal. He explained his dual role of being both advocate and expert witness and presented copies of his documentary evidence to the Tribunal. The following is a summary of its contents:
4. The appeal had been validly served in accordance with the statutory definition of Rateable Value (RV) and Mr Jones referred the Tribunal to Statute Law and the Definition of RV that is found within Schedule 6 (2)(1) to the Local Government Finance Act (LGFA) 1988.

“2(1) The RV 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 if the tenant undertook 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 that rent.”

5. The VO confirmed the Date of Valuation, in accordance with The Rating Lists (Valuation Date) (Wales) Order 2014, that the 1st April 2015 is specified under paragraph 2(3)(b) of Schedule 6 (Non-Domestic Rating: Valuation) to the LGFA 1988 as the day be reference to which the RVs of non-domestic hereditaments are to be determined for the purposes of the local and central non-domestic rating lists which are to be compiled for Wales on 1st April 2017.
6. With the use of ordnance survey maps, photographs and line drawings, Mr Jones explained that the appeal property was known as Unit 1 Port Road Retail Park, Culverhouse Cross, Cardiff CF5 6AE, occupied by B&M and located approximately 7 miles to the west of Cardiff city centre. This property was situated in the popular retail warehouse location of Culverhouse Cross close to Marks and Spencer, Tesco and Vale Gate Retail Park, which included TK Maxx and Carpet Right. It also co-located with Aldi, Currys PC World, Burger King and Pizza Hut with free parking available for customers.
7. The appeal property is currently shown in the 2017 Rating List as a Retail Warehouse and Premises with a RV of £290,000 effective from 12th March 2018, with the VO's valuation shown as: -

Unit 1 Port Road Retail Park			
Description	Area m ² /unit	£ per m ² /unit	Value
Ground floor sales	2814.73	£100.00	£281,473
Air-conditioning system	2459.36	£4.00	£9,837
Sub-total			
		RV	£291,310
Rounded down to RV			£290,000

8. Mr Jones contended that the appeal property had an area of 2814.73m², which was not in dispute between the parties. Mr Towersey had informed him that the property was occupied under a lease for 25 years and commenced on 25th December 1998. Mr Jones understood that the current rent passing to be £834,291.55 pa, with a capital contribution of £3,500,000 being paid to the tenant, this rent was payable from 15th December 2018, some 3 years and 9 months after the antecedent valuation date (AVD) and as such he did not feel that regard should be given to this rent.
9. Rating valuation was based on rental evidence at a specified date known as the AVD. The case of Lotus and Delta Limited v Culverwell (VO) and Leicester City Council (1976) RA 141 sets out a procedure for considering evidence for rating purposes:
 - The starting point should be the rent on the subject property.
 - *Mr Jones stated that the subject property's rent was £834,291.55pa from 25th December 2018.*
 - The more closely the circumstances under which the rent is agreed as to time, subject matter and conditions related to the statutory requirements contained in the definition of RV the more weight should be attached to it.

- *As the rent was 3 years and 9 months post the AVD, Mr Jones stated that he has attached no weight to it. This rent would be relevant for the 2021 Rating List.*
- Consideration should then be given to rents on similar properties to ascertain whether the rent on the subject property was at an appropriate level.
 - *Mr Jones stated that no rents at the AVD on similar size properties were available at the appeal property's location.*
- Rating assessments on comparable properties should also be considered.
 - *The assessments detailed in Mr Jones' documentation pack helped him in his review of the RV of the appeal property.*

10. Mr Jones then referred to his comparable properties as follows:

Address	Area m ²	£/m ²	Remarks
Currys, Port Road Retail Park, Culverhouse Cross, Cardiff CF5 6AE	2222.4	£110	No 2017 appeal to date. This property is situated next door to the appeal property.
Unit B, Vale Gate Retail Park, Culverhouse Cross, Cardiff CF5 5RT (TK Maxx)	2783.48	£105	No 2017 appeal to date.
Unit A Wenvoe Park, Culverhouse Cross, Cardiff CF5 4UG (was Homebase now The Range)	3868.1	£100	Appeal agreed with Helen Edwards of Gerald Eve. Appeal was listed for this Hearing. This is one of just two retail warehouses at this location in Culverhouse Cross
Units 2A & 2B Brooklands Retail Park, Culverhouse Cross CF5 6XW (Aldi)	1939.24	£110	No 2017 appeal to date.
Unit H Cardiff Bay Retail Park, Ferry Road, Cardiff CF11 0JR (Home Bargains)	2435.0	£100	Agreed with the Beattie Partnership as Agent for Home Bargains. This property is situated approximately 5 miles further along the A4232 towards Cardiff City Centre.
Unit 2 The Avenue Retail Park, Newport Road, Cardiff CF23 9FF	4627.35	£105	Agreed with James Towersey, CBRE as Agent.

11. On conclusion, Mr Jones was of the opinion, as assessments on similar size retail warehouses have been discussed and agreed by Agents, the rate of £100/m² adopted for the valuation of the appeal property would be fair and reasonable. Therefore, he requested that the Tribunal confirm the 2017 RV of £290,000 with effect from 12th March 2018.
12. During cross questioning, the main point clarified by Mrs Harris, as advocate, was noted as follows: -
 - No inspection had been carried out by the Valuation Office Agency, as it was not found to be necessary with areas not being in dispute.
13. To support his case, Mr Towersey provided all persons present with a copy of his documentation pack. In stating his case, Mr Towersey stated his statement of truth and his duty to the Tribunal for Wales as an expert witness which overrode any duty to those instructing or paying him and his role as advocacy. He then provided his qualifications and experience in business rates matters.
14. Mr Towersey explained that the appeal against the 2017 Rating List assessment was submitted on 27th September 2018 and acknowledged as received by the VOA on 29th September 2018.
15. The proposal was set in a programme for discussion with a target date of 31st January 2020 and subsequently listed for Hearing at Tribunal on 11th March 2020.
16. Initial contentions, including the rental details relating to the subject property, were sent to the VOA on 8th November 2019 and a chase email was sent on 20th January 2020 requesting the opening of discussions due to the listing of the appeal at Valuation Tribunal.
17. A holding response was received from the VOA's caseworker, Mr Jones, on 10th February 2020 stating that he would provide his response within a week. Following no further response, Mr Towersey sent another email on 3rd March 2020 to which a response was finally received. No Regulation 31 Notice had been served by the VOA confirming the evidence on which they would rely at Tribunal.
18. Mr Towersey explained that he had inspected the appeal property on 28th June 2018. The property was previously assessed as two hereditaments and included a mezzanine floor which was removed prior to occupation by B&M. The revised floor areas and the factual elements of the valuation were agreed with the VOA and the Rating List was amended to reflect the corrected floor areas.
19. The issue in dispute between the parties was the base rate of valuation and price per sqm applied to the valuation.
20. Mr Towersey contended that the Rating List assessment should be reduced as follows: -
 - The appeal property,
Unit 1 Port Road Retail Park,
Culverhouse Cross,
Cardiff CF5 6AE
RV of £223,000 with effect from 12th March 2018.

In his opinion, the current rate of valuation was excessive for a property of this type and size on this retail park. Based on the open market rental evidence at the subject property, he considered a reduction unit rate of £76.00/m² to be more appropriate.

21. Reference was then made to the Rating hypothesis found within Schedule 6 (2)(1) to the Local Government Finance Act (LGFA) 1988 and the Case Law of ***Lotus & Delta Ltd v Culverwell (VO) & Leicester CC (RA/141/1976) and Go Outdoors v Lamb (VO) (UT/RA/66/2013)***
22. In describing the appeal property and its location, Mr Towersey stated Port Road Retail Park was situated to the west of Cardiff City Centre adjacent to the junction of the A48 Cowbridge Road and A4232. Access was off the A4050 Port Road which led to Barry.

Port Road Retail Park comprised 3 adjoining retail warehouse buildings of steel frame construction with part brick/block elevations and insulated profile sheet cladding above. The units were now occupied by Currys PC World, Aldi and B&M, and there were also two food outlets on the retail park occupied by Pizza Hut and Burger King.

Internally the accommodation provided retail warehouse space at ground floor level which was part sub-divided by an internal wall. The accommodation also had a suspended ceiling and air-conditioning. Ancillary storage and staff areas were situated at the rear of the unit.

Shared parking was provided to the front of the units and there was a loading yard to the rear.
23. The appeal property comprised a relatively large retail warehouse unit in the Culverhouse Cross area of Cardiff. The property was formerly occupied by PC World before they consolidated into the Curry's unit. Prior to occupation by his client the unit was available to let for in excess of 2.5 years on the open market, being first put to the market in March 2016.
24. The property was held under a lease for a term of 25 years commencing 25th December 1998 at a passing rent of £834,291.55pa, which was a fixed uplift with effect from 25th December 2018 from £719,667pa. His client took an assignment of the lease with effect from 12th March 2018 and was paid a capital contribution of £3,500.00. Within the lease the user clause specifically limits the amount of food retail on site to no more than 15% of overall floorspace.
25. Mr Towersey stated that he has analysed the terms of occupation by B&M for the period until the end of the lease on 24th December 2023, which nets down to £214,078pa. This equates to £76.06psm in comparison with the current assessment which was based on a base unit rate of £100psm.
26. The VOA has not served a Regulation 31 Notice in respect of this appeal. Mr Towersey understood the reason for this was that *"there are no rents of properties of a similar size at the AVD"*.
27. Mr Towersey stated that he received the VO's document of evidence on the 10th March and, within the very limited timescale available, he provided his comments to the VOA as follows:

- Three of the comparable properties stated have not been subject to appeal and therefore not been tested. The reasons for this can be numerous and as a result the assessments at this stage of the Rating List could not be shown to prove or disprove the level of value applied.
- Unit A Wenvoe Park, Culverhouse Cross – Mr Towersey was unable to verify the rental information in respect of this property but understood that it was held under a lease from 1998 at a passing rent of £520,000pa, which was set historically. The actual floor area of the building was significantly smaller than that stated by the VOA in their document, however, it benefitted from a significant external display area and additional land.
- Whilst the VOA had included Wenvoe Park in its Schedule, the nearby Home Bargains unit on Cowbridge Road West CF5 5TB was omitted. This was in a development adjoining a Lidl Food store fronted by several smaller retail units including a Domino's Pizza and totals 2,024sqm. This was agreed based on a passing rent of £116,000pa set in 2014, which equates to circa £54psm. Lidl was assessed based on a food store in a different scheme and at a significantly higher unit rate.
- The Aldi unit on the Brooklands Retail Park had the benefit of an open food retail planning consent. As previously stated, the use of the appeal property was specifically restricted in terms of food sales.
- Unit H Cardiff Bay Retail Park was situated within a completely different area of Cardiff and different trading location. Cardiff Bay Retail Park had 16+ units on site extending to in excess of 30,000 sqm and was anchored by an Asda superstore. Unit H was agreed based on the passing rent, which was set well past the AVD in September 2017, and was considered good evidence by both parties to reach agreement. The VO had however not mentioned other similar sized units on this development which were assessed at lower unit rates (i.e. Units J & M on Capital Bay Retail Park which were both circa 1,900sqm but assessed at only £95psm). This showed that rents can vary on an individual park let alone those on parks in different locations.
- The Avenue Retail Park was again situated in a completely different area and trading position to the appeal property. It was significantly larger, had frontage onto one of the main arterial routes into Cardiff and had the benefit of an extensive external sales area. It was therefore, in Mr Towersey's opinion, not comparable to the appeal property. Importantly, the agreement reached on this unit was based on evidence for units on the park and reference was also made to the terms of a new deal for the letting of this subject unit in 2019, which was in line with the agreed assessment.
- There were numerous other Hereditaments along Newport Road of a similar size to the appeal property assessed at lower unit rates and included:
 - Unit 1a City Link Retail Park, Newport Road CF24 1PQ – RV £302,500 – 3,445.8sqm @ £88.50psm.
 - The Range, 372 Newport Road CF23 9AE – RV £330,000 – 3,605sqm @ £86psm.
 - George Street Furnishers, 374 Newport Road CF23 9AE – RV £139,000 – 2619sqm @ £70psm.

- There were also several other settlements that have not been mentioned specifically in respect of other B&M stores in Cardiff. An example of this was Unit 2 Pentwyn Retail Park, Pentwyn Road CF23 7XH. Although smaller than the appeal property at 952.6sqm it was agreed on a unit rate of £75psm, which was based on the rent set 4 years prior to the AVD.
- It was therefore very dangerous to cherry pick odd assessments in different trading locations to try and justify a tone when values in specific areas and even on the same retail park can vary considerably. Rents post AVD have been used by the VOA in Cardiff.

28. Mr Towersey considered the correct assessment for the appeal property to be as follows:

Unit 1 Port Road Retail Park			
Description	Area sqm	Price per sqm	Value
Ground floor sales	2814.73	£76.00	£213,919
Air-conditioning	2459.00	£4.00	£9,836
Sub-total			
		RV	£223,000

29. On conclusion, Mr Towersey believed the current assessment applied to the 2017 Rating List for Unit 1 Port Road Retail Park, Cardiff was excessive. In particular, the base unit rate applied by the VOA was excessive in comparison with open market rental evidence at the appeal property, which he considered was the best evidence available.
30. Based on all the available evidence, Mr Towersey requested the Tribunal to determine and confirm his revised assessment of RV £223,000 for the appeal property with effect from 12th March 2018.
31. In light of Mr Towersey having referred to no Regulation 31 Notice having been served by the VOA; the Tribunal stated it found no rental evidence had been presented to warrant the service of the Regulation 31 Notice by the VOA. Mr Jones confirmed that he has not referred to rental evidence, the comparable properties he provided was to demonstrate the tone established in the locality to the appeal property, in following the formulated process as stated in the Case Law of Lotus and Delta Ltd v Culverwell (VO) and Leicester City Council.
32. During cross questioning, the main points provided/confirmed by Mr Towersey and Mrs Harris were noted as follows: -
- Mrs Harris drew attention to the case of Lotus & Delta which referred to the time when other assessments can be considered. Mr Towersey stated that the VOA have accepted rents post AVD and where tone of list established, however, the comparable properties mentioned were not even appealed nor discussed and some were situated in different locations to the appeal property.
 - Mrs Harris drew attention to one of the comparable properties having been agreed at £100/m². Mr Towersey stated that the client for that property had not given approval and therefore, in his opinion, not agreed. Mrs Harris stated that the agent, Gerald Eve, accepted the agreed RV.

33. In summing up their evidence, Mr Jones stated that the appeal property comprised a retail warehouse which has been valued at the same level as agreed on similar retail warehouses. He requested the Tribunal to confirm the 2017 RV of £290,000 with effect from 12th March 2018.
34. Mr Towersey stated that he did not consider that the VOA had provided compelling evidence, the comparable properties were situated in different locations and have not been discussed. Although, the rent on the appeal property was post AVD, the VOA has shown that they have accepted post AVD rents. In analysing the appeal property's rent, Mr Towersey requested the Tribunal to adopt his 2017 RV of £223,000 with effect from 12th March 2018.
35. At the conclusion of the Hearing, the Tribunal decided to reserve its decision.

The Reasons for Decision

36. Having considered all the evidence placed before it the tribunal decided as follows: -
37. The issue to be determined by the Tribunal was the accuracy of the appeal property's RV within the 2017 Non-Domestic Rating List, therefore, reference was made to the definition of RV as set out in Schedule 6 (2)(1) of The Local Government Finance Act 1988, as amended by Section 1(2) of the Rating Valuation Act 1999. This states that the RV 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, subject to the statutory assumptions.
38. The Tribunal was required to value all properties for the 2017 Rating List by reference to the AVD of 1st April 2015 but taking the physical circumstances as at the material date. The material date for the subject appeal was the compiled list entry date of 1st April 2017.
39. Being mindful of the basis of valuation, the Tribunal was aware that it also had to consider the basket of rents and not just one rent in isolation as per the formulated valuation process set down in the leading Case of Lotus and Delta Ltd v Culverwell (VO) and Leicester City Council.
40. In considering the rental information, the Tribunal noted that B&M took occupation of the appeal property on 12th March 2018 and was paid a capital contribution of £3,500.000. Its current passing rent was £834,291.55pa from the 25th December 2018, some 3 years and 9 months post the AVD, 1st April 2015.
41. With Mr Towersey being of the opinion that Mr Jones should take the appeal property's rent into consideration some 3 years and 9 months post the AVD, the Tribunal noted that although the VOA had accepted a passing rent in September 2017 on the property for Unit H Cardiff Bay Retail Park, 2 years and 5 months past the AVD, the passing rent for the appeal property had passed well over the halfway mark of the life of the 2017 Rating List. Therefore, the Tribunal concluded that the appeal property's rent was too far removed from the AVD and consideration should be given to other assessments.
42. With no other rental information provided and continuing to take guidance from the process set down in the Case of Lotus and Delta Ltd v Culverwell (VO) and Leicester City Council, the Tribunal considered the comparable properties provided to support the tone established for the locality of the appeal property.

43. On examination of the comparable properties presented, the Tribunal noted Mr Towersey's concern in 'cherry picking' odd assessments in different trading locations as values can vary considerably.
44. The Tribunal also noted that the comparable properties stated by Mr Jones were in general very near in location to the appeal property, with only two being located some 5 miles away. With the properties mentioned by Mr Towersey being situated some 5 miles or more from the appeal property.
45. Having examined the comparable properties, the Tribunal found Unit A Wenvoe Park, Culverhouse Cross, Unit H Cardiff Bay Retail Park, Ferry Road, Cardiff and Unit 2 The Avenue Retail Park, Newport Road, Cardiff, had areas ranging from 2435.0 to 4627.35. Their assessments having also been discussed with various agents; thus, giving an indication and support to the tone establishing in the locality.
46. Based on the evidence provided, the Tribunal concluded that the VO was fair and reasonable in allocating a base unit rate of £100/m² for the appeal property, in line with similar retail warehouses.
47. In such cases, the burden of proof rests with the Appellant's Agent and having examined all the evidence submitted, the Tribunal felt that the Agent had failed to discharge his burden of proof.
48. In view of the above information, the Tribunal determined that the VO was correct in his approach and confirmed that the appeal property, Unit 1 Port Road Retail Park, Culverhouse Cross, Cardiff CF5 6AE, should remain in the 2017 Rating List with a RV of £290,000 with effect from 12th March 2018, based on the following valuation:

Unit 1 Port Road Retail Park			
Description	Area m ² /unit	£ per m ² /unit	Value
Ground floor sales	2814.73	£100.00	£281,473
Air-conditioning system	2459.36	£4.00	£9,837
Sub-total			
		RV	£291,310
Rounded down to RV			£290,000

Certified a true copy on 3rd April 2020.