

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Ms Jess Greville

Appeal Property: Unit 1 Cross Hands Shopping Centre, The Square, Cross Hands, Llanelli SA14 6NT

Appeal number: 682933234350/285NV17

The Matter Appealed Against: 2017 Rating List

Date of Hearing: Monday 15th March 2021

Appearances (via video link): Ms Jess Greville (appellant) & Mr Neil Holmes (for the respondent Valuation Officer)

Date of Decision: 12th April 2021

Decision of Tribunal: Appeal allowed in part.

Members of the Tribunal: Mr M Mason (Chairperson), Mrs M Jones & Mr S Hennah

Tribunal Clerk: Mr G Harris

Introduction:

1. The appeal under consideration followed a proposal made by Rates and Rental Surveyors Ltd in respect of Unit 1 Cross Hands Shopping Centre, The Square, Cross Hands, Llanelli SA14 6NT which the respondent Valuation Officer received on 15th January 2019. The proposal sought a reduction in the Rateable Value (RV) of the appeal property from £21,000 to £1 with effect from 1st April 2017 on the following grounds –

We believe that the current Rateable Value is excessive and inaccurate.

Ms Greville had since disengaged her agents and represented herself at the hearing.

2. The appeal had been adjourned from a prior hearing on 29th January 2021 in order that a pre-hearing review could be held on 8th February 2021. At the pre-hearing review orders were issued pertaining to the exchange of evidence. The Tribunal was grateful to the parties for the provision of evidence as set out in the pre-hearing review.
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. Prior to presenting her case Ms Greville highlighted parts of the VO's submission which she did not believe should be included as evidence, this included documents relating to her position as a company director of the landlord company and photographs of a property which the VO considered comparable to the appeal hereditament. Mr Holmes confirmed that he had no objection to photographs identified by Ms Greville being struck from his evidence.
5. Ms Greville explained that her late father had developed the site in 2009. She held an unpaid role with no significant control as a company director and had only taken on the role to assist her mother. Ms Greville had left her legal career to take on the shop after the previous tenant had become bankrupt. She had discussed the rental amount with solicitors and compared the rent paid by the other units to ascertain the market value. She had fully declared her position in the landlord company to the VOA in 2015 and 2017 and contended that there had been no attempt to mislead.
6. Ms Greville referred the tribunal to a map showing the location of the subject property and that of comparable properties together with photographs of the site and property.
7. Ms Greville contended that the current valuation was problematic as it described the appeal property as being a 'retail warehouse & premises' with no allowances for quantum or location. The assessment had a total area of 324.69m² and had been assessed at £65/m². The rent paid was £12,000 per annum including VAT, or £10,000 excluding VAT. Ms Greville stated that the rent should be the starting point in any valuation and the rental equivalent in this case was £30.80/m², over 50% lower than the base rate used.
8. Describing the appeal property Ms Greville explained that there was no functional heating or wall or roof insulation. The windows were single glazed, and none faced the road. It was in a disadvantaged location as there was no passing traffic since the closure of the A48 trunk road. There was also a new retail development in the area which further reduced traffic.
9. Ms Greville contended that the unit was grossly overrated and had been incorrectly assessed. She had looked at her competitors and discovered her RV was quadruple that of theirs. Referring to a table of competitors Ms Greville noted that the base rate used varied between £25 and £40/m², and only 2 had been assessed as retail warehouses. Ms Greville believed her RV was out of kilter with comparable properties and that the base rate was not in line with the established tone of list of comparable properties in terms of size, physical characteristics, mode of occupation and location.
10. Ms Greville stated that the current assessment was inconsistent with established local assessment practices including that of the apportionment

of £/m² rates to different floor areas, allowances, adjustments, and relatives. She contended that most properties included in the valuation scheme were not truly comparable to the appeal property. Ms Greville referred to competing businesses highlighted in her evidence which had been valued using a different scheme. Photographs of properties valued on the same scheme showed properties with high turnovers on busy retail parks, a world of difference from her property located on a small site with independent businesses struggling to make a living. Hence, the current valuation had the effect of producing a grossly unfair assessment, placing her at a significant disadvantage to her competitors.

11. Referring to case law, Ms Greville highlighted the case *Garton v Hunter* (1969) where Lord Denning Stated –

“Admit all relevant evidence. The goodness or badness of it goes to weight, and not to admissibility”.

Ms Greville asserted cases should be assessed like for like as affirmed in the case *Valuation Officer v Scottish & Newcastle Retail Ltd & Anor* (2001). The case *Scottish & Newcastle Retail Ltd v Williams (VO)* (2001) provided that business premises could be compared irrespective of mode, or category of occupation if the evidence justified it. The case *Lotus and Delta v Culverwell (VO) & Leicester City Council* (1976) confirmed that the rent should be the starting point in the hierarchy of evidence.

12. Ms Greville explained that the VO had a statutory duty to maintain a fair and accurate list and referred the tribunal to a series of passages from the VOA's Rating Manual.
13. Ms Greville contended that the issues to be decided related to whether the property had been assessed correctly having regard to the relevant statutory provisions, guidance, and common law. Whether or not the unit should be assessed as a retail warehouse or as an industrial unit with an uplift for sales/retail. What the appropriate base rate should be in relation to settled comparables having regard to age, size and category of use and what end allowances should be applied having regard to quantum and the obvious significant disadvantages of the site.
14. Ms Greville explained that in her opinion there were 2 options, either assessing the property as a retail warehouse or as a second-generation industrial warehouse. She believed the first option to be problematic. The VO's rating manual described a retail warehouse as being typically a minimum of 1000/m². The appeal property was nothing like most of purpose-built retail warehouses as highlighted in a list of similar properties provided in her evidence. The appeal property did not have a loading bay and was more of a showroom where items could not be picked up on the day.
15. Referring to her comparable properties, Ms Greville explained that some retail warehouses on the same site had been valued using a base rate of £30/m². She placed little weight on the VO's rental evidence as the

information had not been verified and some figures were incorrect. The best evidence was that of the most recent appeals, at Leekes and Happy Home Furnishers, both located on the superior Cross Hands Business Park, within walking distance of the appeal property. Both were classed as retail warehouses with areas split according to use with varying base rates applied throughout and allowances applied. Other retail warehouses in the locality also reflected differing prices applied to their valuations depending upon the description of the area within the property.

16. The second option would be to value the appeal property as a second-generation industrial warehouse with an uplift for retail/sales. The base rate applied in such assessments was significantly lower as highlighted in a printout of valuation schemes and another of comparable properties obtained from the VOA's website.
17. Ms Greville explained that the Business Zone at Cross Hands was a prominent site with high footfall, within walking distance of the appeal property. Of the units there only 3 had been classed as retail warehouses, the remaining units had been valued in industrial classes. A direct competitor, Katilla, a larger and newer unit had been valued as a workshop and premises with a base rate of £30.50/m² which Ms Greville contended was not fair. Pictures presented in evidence together with corresponding valuations highlighted that most properties had been valued with different values applied to areas within the assessment.
18. Ms Greville referred to Nisa, Drefach as a comparable property in that it had also started out as a petrol station prior to redevelopment. Welsh Dragon Stores, Penygroes was an industrial unit used as a stove showroom had been valued as a warehouse and stores using a base rate of £18.50/m² with the internal areas split according to use.
19. The appellant felt that valuing the appeal property as an industrial unit would be the fairest method as it would place the appeal property on an even footing with its competitors. A table of which was provided as evidence highlighting the base rates applied. This was essential for the long-term success of the business.
20. Ms Greville explained that the appeal property should be valued using an established pattern of differential values applied to the square meterage. Using the £10,000 rent as a starting point, the base rate would be £30/m² and valuing the property according to option 1, as a warehouse with an uplift for sales/retail as applied to Rear of 2 Llandeilo Road would produce the following valuation –

Description	Area m²	Price/m²	Value £
Ground floor sales	267.89	£30	8,036.70
Kitchen	6.41	£15	96.15
Office	12.50	£15	187.50
Staff toilets	3.43	£0	0
Internal Storage	34.46	£15	516.90
	324.69		£8,837.25

Or Option 2, using the same method applied generally to retail warehouses in the immediate locality and similar to a valuation offered by the VOA during discussions –

Description	Area m²	Price/m²	Value £
Ground floor sales	267.89	£37.50	10,045.88
Kitchen	6.41	£20.00	128.20
Office	12.50	£20.00	250.00
Staff toilets	3.43	£0	0
Internal Storage	34.46	£20.00	689.20
	324.69		£11,113.28
Adjustment (permanent locational disadvantage/quantum) -10%-20%			
Adjustment (no heating, wall or roof Insulation) - 2.5%			
			£9,264.30

Ms Greville stated that this was in line with the case Reid Furniture Ltd v The Lothian Assessor (2008) which determined that the base rate should be established followed by any allowances.

21. Ms Greville contended that there were no statutory prescribed methods of valuation and that the appropriate method must be determined fairly considering the circumstances in each case.
22. Under cross examination, Ms Greville confirmed that the unit had an air blower heating unit however she had been informed that it was not adequate for the property. Ms Greville also confirmed that her family owned the retail park, but she was not involved in the setting of the rents payable, this was dictated by market values. She had not received any discount in the rent passing at the appeal property due to her family's company being the landlord.

Summary of the respondent's case

23. Mr Holmes introduced himself and explained that the appeal for consideration related to a complied list entry where the method of assessment applied was under dispute. Mr Holmes provide the tribunal with a map of the area, a site plan and plans and photographs of the appeal property. He described the unit as comprising a single storey steel portal frame, half brick and corrugated clad under a corrugated pitched roof. It had been fitted out internally to a high standard with a partition wall

to split the sales and stores areas. There was also office accommodation, a kitchen, and staff toilets.

24. Mr Holmes explained that the basis of valuation for the appeal property had been defined under Paragraph 2(1) Schedule 6 of the Local Government Finance Act 1988 as –

2(1) The rateable value of a non-domestic hereditament [none of which consists of domestic property and none of which is exempt from 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.*

25. Responding to Ms Greville's case, Mr Holmes explained that valuation schemes were reviewed and adjusted accordingly following revaluations, for several reasons including changes in the locality due to new developments or changes to the market due to infrastructure alterations. The appeal property had been valued according to a valuation scheme for retail warehouses in the Swansea, Neath, Port Talbot, and Llanelli areas.

26. Mr Holmes explained that the property had been measured to Gross Internal Area (GIA) as set out in the RICS Code of Measuring Practice and in compliance with the Rating Manual, an extract of which was provided as evidence. Referring to a revised survey plan which had followed an inspection, Mr Holmes described the property as being open plan with partition walls throughout. The partition walls had no effect on the valuation as they did not constitute a permanent physical alteration. Photographs highlighted the storeroom as currently having the same quality fit out as the retail area. Another set of photographs illustrated the property as a shell when built in 2005.

27. Mr Holmes believed that the current RV of £21,000 was too high and proposed a revised valuation based on £40/m². He explained that a split valuation was not applicable for premises fitted out as retail warehouses where the quality of accommodation was the same throughout. In addition, retail warehouses were valued on an overall basis with no differentiation between accommodation such as kitchens and toilets.

28. The appeal property had a total area of 324.69m² and the rent payable on a 12-year lease with effect from January 2015 was £10,000, which analysed at £30.80. Mr Holmes stated that in line with the cases Ladies

Hosiery and Underwear Ltd v West Middlesex Assessment Committee (1932) and Lotus and Delta v Culverwell (VO) & Leicester City Council (1976) he had considered a basket of evidence in formulating his valuation. As the passing rent on the subject property was not at arm's length Mr Holmes believed caution must be given on whether it truly reflected the open market rent for the property. A copy of the Companies House record for the landlord company was included in evidence. Mr Holmes' revised valuation was as follows –

Floor	Description	Area m ²	Line factor	£ m ² /unit	Value (£)
Ground	Sales overall	324.69	1.000	40.00	12988
Subtotal					12988
Adopted Rateable Value					£12,750

29. To support his valuation Mr Holmes referred to a rental summary of properties located on the same site, which he contended must be considered alongside the rent of the appeal property. Consideration had to be given to a basket of rents to determine an appropriate rate per square meter for properties of a similar nature to be valued, having regard to the hypothetical tenant as laid out in statute.
30. Studio Gwendraeth and the Tattoo Studio, both on the same site, were smaller than the appeal property with rents analysing at £57.83/m² and £60.37/m² respectively. Mr Holmes believed these supported a reduction for the appeal property due to quantum. Aber Landscapes r/o Llandeilo Road was substantially smaller, the rent had been agreed 3 years pre-AVD hence Mr Holmes had placed little weight on it. Haven Vets included a mezzanine floor, the rent analysed at £54.53/m² and Units 5 & 6, a retail warehouse, analysed at £105.93/m². Plans of Haven Vets and Units 5 & 6 were included as evidence illustrating their layouts. Other units on the site were due to be inspected following requests to review their valuations.
31. Mr Holmes considered Leekes and Units 5 & 5B Cross Hands Business Park to be situated in a superior location. Units 5 & 5B had an area of 3552.30m² and the rent had been agreed on appeal at £52.50/m² which suggested to Mr Holmes the tone of £65/m² to be reasonable for the appeal property. An appeal relating to Leekes had been withdrawn following discussions. The main sales area totalling 9112m² had been valued at £50/m². Mr Holmes provided the valuations and photographs of both in his evidence and stated these reflected the difference in quality from that of the appeal property. He also noted that there had been no split valuation but rather an accurate reflection of the assessment having regard to quality, age, and construction. Referring to an assessment summary table Mr Holmes believed the settled appeals to be important when considering the hierarchy of evidence.
32. In conclusion Mr Holmes stated that he had looked at all the evidence available at the shopping centre placing weight where applicable. He believed the valuation on an overall basis was correct for rating purposes

using a rate of £40/m² and asked the tribunal to confirm a revised assessment of £12,750.

33. At the conclusion of the hearing, the tribunal decided to reserve its decision.

The Reasons for Decision

34. Having considered all the evidence placed before it the tribunal decided as follows: -

35. The first matter for consideration related to Ms Greville's contention that there were 2 options in valuing the appeal property, either as a retail warehouse or as an industrial unit with an uplift for sales/retail. After careful deliberation on the description, plans and photographs of the appeal property and that of its competitors, and noting that the property had to be valued under the statutory requirements of being 'vacant and to let' the tribunal decided that the property fell within the definition of a retail warehouse.

36. Although Ms Greville had provided extracts from different websites, including the Rating Manual's section outlining the general history of retail warehouses, stating that such properties typically had an area in excess of 1000m² the tribunal noted that Section 878 of the Rating Manual, the standard guide used for valuation purposes, did not restrict the size of such units. It stated at paragraph 1.2 –

The retail warehouse class includes all non-food retail units and food retail units without restriction to size. Generally their construction shows a much greater visual similarity to warehousing than to that of standard shop units. Retail warehouses usually occupy a single floor, the majority of which is devoted to sales, with some ancillary storage and office use.

37. After deciding the appeal property constituted a retail warehouse the tribunal had to decide whether the assessment should be valued on a 'split' basis with different values applied to areas according to use or on an overall basis, and whether there should be any adjustments for location or lack of heating.

38. Again, after careful deliberation on the description, plans and photographs of the appeal property and that of its competitors and noting that the property had to be valued under the statutory requirements of being 'vacant and to let', the tribunal decided that the VO had been correct to value the property on an overall basis. The property was of a high-quality fit throughout and areas were divided on a non-permanent basis by way of partition walls. Unlike that of Leekes, for example, which seemed to the tribunal to be an amalgamation of different units of varying quality.

39. The tribunal decided that no adjustment was warranted due to location, as the tribunal did not consider the location to be detrimental, both the appeal property and those located on the superior Cross Hands Business park were accessed via a roundabout and roads leading from the main A48. Ms Greville had stated under cross examination that the property had inadequate heating, therefore no allowance was allowed due to a lack thereof.
40. The final item for consideration was the unit rate to be applied in the valuation. Both parties referred to the case *Lotus and Delta v Culverwell (VO) & Leicester City Council (1976)* in their evidence, however disagreed on whether the rent passing on the appeal property should be the starting point in determining the base rate. Although the passing rent was considered, in line with the case *Garton v Hunter (1969)*, the tribunal decided that less weight should be applied to it as there was no dispute that it was between connected parties, with Ms Greville being a director of the landlord company, despite her assertions that the rent was market value. The tribunal therefore considered the approach by the VO to be correct in considering a basket of rental evidence together with that of settled appeals.
41. The tribunal noted the base rate applied to the considerably larger sales area at Leeks was £50/m² and at Units 5 & 5b Cross Hands Business Park was £49.88/m² and £52.50/m². This, together with the analysed rent at Cross Hands Shopping Centre indicated that the VO's revised base rate of £40/m² was not excessive and no further reduction to £37.50, as contended by the appellant in her retail warehouse valuation, was warranted.
42. Considering the above, the Tribunal believed the Valuation Officer's revised valuation to be more than fair and reasonable. Therefore, the Tribunal orders the Valuation Officer to amend the RV of Unit 1 Cross Hands Shopping Centre, The Square, Cross Hands, Llanelli SA14 6NT from £21,000 to £12,750 with effect from 1st April 2017.

Certified a true copy on 12th April 2021.