

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: S K Sales Limited

Appeal property: Unit F19 Asmount Business Park, Swansea Enterprise Park, Llansamlet, Swansea, SA6 8QR

Appeal number: 685534654125/285NV17/14

The Matter Appealed against: Non-Domestic Rating List Appeal

Date of Hearing: 26th April 2022

Appearances: Mr A Sharkie for appellant ratepayer and Mr M Allen for respondent Valuation Officer

Date of Decision: 23rd May 2022

Decision of Tribunal: Allowed

Members of the Tribunal: Mr A G Hallett (Chairperson), W P Bagnall & W G Lewis

Tribunal Clerk: Mr J Evans

Introduction

1. This appeal followed a proposal made by the Altus Group UK Ltd on the grounds that the entry for the subject property, Unit 19, Ashmount Business Park, Swansea Enterprise Park, Swansea was incorrect on the day the 2017 Rating List came into force. The ratepayer contended the List entry for the subject should be reduced from Rateable Value (RV) £17,750 to £1.00 with effect from 1st April 2017
2. The Valuation Officer (VO) received the proposal on 25th September 2020. Since the proposal was neither well founded nor was it withdrawn, its details were transmitted to the Valuation Tribunal for Wales.
3. In their respective cases, both parties referred to the definition of RV as it was prescribed by Schedule 6 of the Local Government Finance Act 1988 and to the definition of Material Day as set out in Schedule 6 Part 2(7) of the same Act. They also referred to a number of superior court judgments, namely *K Shoe Shops Ltd v Hardy (VO) & Westminster City Council*, *Lotus and Delta v Culverwell (VO) 1976*; *Oldschool & Oldschool v Coll (VO)*; *BPP Holdings Ltd v Revenue and Customs Commissioners (1976)*; *Telereal Trillium v k Hewitt (VO) [2018]* and *Vines Ltd v de Mauny (VO) [2010]*. The substance of these cases addressed matters such as the weight one should give to evidence; matters associated with tone of the list; the visibility given to the appellant of HMRC's evidence; that tribunals have a responsibility to ensure that they come to the correct decisions and upon rests the burden of proof.
4. The parties referred to maps and plans of the area in which it was situated, a schedule of comparable evidence, rental summaries of comparable properties the settlements of other properties on Ashmount Business Park and their respective valuation of the subject.

5. The tribunal understood that the day on which valuations are to be made for the purposes of rating case was 1st April 2015. This is known as the Antecedent Valuation Date or AVD. The Material day in this case was 1st April 2017.
6. The subject property is situated amongst a number of other warehouses and premises of varying sizes on a small trading estate in Llansamlett, Swansea. Mr Sharkie presented evidence in support of a reduction in the existing level of value to RV £15,750 with effect from 1st April 2017. Mr Allen acknowledged that the Rating List entry for the subject was in fact incorrect on the day it was compiled and advanced a revised valuation of RV £16,750 with effect from 1st April 2017.

Decision and Written Reasons

7. The primary issue under contention concerned at what point a property's size should a "break" point be introduced in order to reflect a quantum in respect of this Warehouse and Premises situated on Ashmount Business Park, Swansea.
8. With regard to the 2014 rents passing on Unit H22, G20 and K28 Mr Sharkie said that a pattern had emerged which demonstrated that a significant drop in value occurred around the 500m² mark. The tribunal noted that these had been valued at the £40/m² mark. The reasons for these values were that the VOA had either taken into account current tenant improvements that were not present when the property was let; that previous VOA analysis did not reflect incentives agreed in the lease or that a 14 month rent free period had not been included in the VOA's analysis. The tribunal observed the other rents and commentary that were in advanced of the other properties contained in the Mr Sharkie's summary of rents.
9. Both parties had agreed that the passing rent on the subject property was considered unreliable to be of any use to these proceedings. Mr Sharkie's summary of rents was contained on page 10 of his bundle. To demonstrate this drop in value, he referred to Unit A3 Ashmount Business Park, which was 507m² in size and had been valued at £39.90/m². In other examples, such as Unit 17, which was 500.75m² in size, its value was derived from an agreement reached with the VO at a value of £40/m². By this token, Mr Sharkie considered that the subject property should be valued at the same rate as that adopted for Unit F17. Similarly, Unit G20 was shown at 588m and subject to an agreement reached between parties, it was valued at £40/m².
10. Mr Sharkie explained that when he discussed the substantive issues in respect of Unit F17 with the VO, it appeared that the rent was agreed on a size band of 250 to 500m². This was referenced further in Appendix 4 of Mr Sharkie's bundle where the size bands were discussed. He said that the £42.50 which was the settled figure for that appeal was agreed before he provided leases which suggested that the VO was relying upon an incorrect analysis of rents on the estates which led to the revised value of £40/m². Mr Sharkie explained that the rental evidence on the estate that prevailed around the AVD supported a tone of £40/m². Details of these leases were supplied in his supplementary evidence. He added that the withdrawal of the appeal on Unit B4 formed the basis of £45/m² which the VO had based on what the VOA said was the only available evidence. The tribunal acknowledged that the case law had expounded that the rent of the hereditament under

consideration or similar properties close by, formed the starting point of any rating valuation. However, the tribunal was also aware of the importance of settlements particularly where it might appear that they establish tone.

11. However, the issues now under consideration arose when the VO devised a scheme which adjusted the matrix used for warehouses and premises after the agreement with the VO on Unit F17 had concluded. The tribunal understood that the VO had made use of these matrices since the 2005 Rating List was in force. The purpose of the matrices was to assist valuers appreciate similar properties where it was known that their values deteriorated over size. This meant that the break point had been recalibrated for units of 400m² instead of the initial limits of 250m² - 500m². The tribunal understood that the substance of Mr Sharkies' case was that agreement he had reached in respect of Unit F17 be carried over and be reapplied in this instance.
12. Mr Sharkie explained that prior to the settlement of Unit F17, the entire Ashmount Business Park had been placed in the same scheme as the rest of Swansea Enterprise Park. He queried why, if a number of settlements had been reached at 250 - 500m, had the VO decided to adopt a different to the park on which the subject was situated. Whilst the tribunal understood Mr Allen's opinion here was that the availability of rents was a driver, he placed greater weight on the settlements which transpired for other units situated elsewhere on the same development.
13. The tribunal had heard from Mr Allen that the important aspect of the valuation was the end result rather than on the mechanisms used to derive the outcome. In this regard, the tribunal had no truck with the Valuation Officer's decision to review the original set of values based from the settlements that had been achieved on other units on the same development. Indeed, it believed that this was part and parcel of the VO's statutory duty to maintain the rating list where the veracity of that is subject to appeal.
14. The tribunal considered carefully the mechanism of the matrix scheme was referred to in page 11 of Mr Allen's submission. Whilst Mr Allen appreciated that their computer system was unable to calculate a smooth progression of values as they deteriorated over size, he referred to the matrix that was used to accomplish this. He said that for properties in the range 0 – 100 metres would attract a value of £55/m². For properties 100 -123m, the figure is £5,500. However, Mr Sharkie considered that the approach was disproportionate in respect of Unit F17 because the matrix valued properties between 123 and 400m at the same level (£45/m²). Mr Allen appeared to have some sympathy in this regard and expressed surprise that the size of the step in this range was so great and he would have expected smaller steps. For properties between 400 – 450 metres, the value adopted was £18,000. For the subject property of 400.19m, the underlying level of value was £44.98 which, having been applied to the main space, derived a value of £17,862. Mr Allen said that the approach depicted above had been the adopted way of doing things over the course of many lists. He said that the fact that a valuation size matrix had been reduced in value at a certain point did not indicate that its entirety was incorrect by the same proportion or in any other way. He said that it only shows that value adopted at a particular size was incorrect.

15. As a corollary and with reference to page 9 of Mr Allen's submission, the tribunal observed that settlements had been reached in respect of Units B6, B4, F17, K27 and D11-12 with other rating agents. From this evidence the tribunal noted that properties smaller in size, such as Unit B6 (296m in size) was valued at £45/m² but that conversely larger ones had smaller values, say ££35/m² in respect of Units D11 – 12 which was 1235m in size. The tribunal also noted the comments made by Mr Sharkie where he replicated the same information in his "Summary of List Settlements/Alterations" table.
16. Having looked at the email between Mr Sharkie and Mr Morse (VO) in respect of matters that pertained to Unit F17, the tribunal appreciated the appellant's view which was £42.50/m² should be attributed to properties in the range 250 - 500m² and that £40/m² was applicable to those which exceeded 500m². However, the tribunal noted that the properties in Mr Sharkie's evidence that were valued at £40/m² were in excess of 450m². With regard to the agreement on Unit F17, Mr Allen was confused why the agreement for £40/m² was made in this way because it ran at odds with how the matrices worked. He suggested that the terms of the agreement reached on Unit F17 was in some way rogue because no mention had been made to transition. Mr Sharkie considered that such issues were referenced in this way for the sake of simplicity. He said that everyone understood that an element of gradual transitioning would take place to ensure that the standard form was maintained.
17. In the final analysis, the tribunal determined that Mr Allen's revised valuation of £16,750 RV did not appear excessive. The tribunal was not persuaded by the strength of the appellant's case that an argument for a value of £15,750 RV which was based on an underlying value of £40/m² was proven. The subject property was marginally in excess of 400m², which according to the matrix was very close to the £45/m² range. Given this, the tribunal did not consider that Mr Allen's revised valuation of £16,750 RV based on £42/m² was unreasonable particularly as slightly smaller properties had been valued at £45/m².
18. In view of the foregoing, the tribunal allows the appeal to the extent conceded by the VO and orders the Valuation Officer to amend the Rating List to accord with its decision accordingly.

Decision – RV £16,750 with effect from 1st April 2017