

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Merlin's Magic Ltd

Appeal property: Unit 4 R/O Ridgeway Garage, Fishguard Road,
Haverfordwest, SA62 4BT

Appeal number: 684533925010/285NV17/55

The Matter Appealed against: Non-Domestic Rating Appeal

Date of Hearing: 24th April 2022

Appearances:

Mr A Sharkie of Altus Group Ltd for Appellant Ratepayer
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), Mr W G Lewis & Mr
W P Bagnall

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 4 R/O Ridgeway Garage, Fishguard Road, Haverfordwest 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) £26,250 to £1.00 with effect from 1st April 2017
2. The Valuation Officer (VO) received the proposal on 10th December 2019. Since the proposal was neither well founded nor was it withdrawn, its details were transmitted to the Valuation Tribunal for Wales.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 whom rests the burden of proof.

4. 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 is 1st April 2017.
5. The admitted basic facts relevant to this property was that it comprised a total area of warehouse space of 682m. The lower part of the property was of block construction with the upper half of profiled concrete asbestos. A smaller block and concrete asbestos store is situated to the north of the main building and an area of dedicated parking allocated to the occupiers.
6. The appeal property was and is a warehouse and premises situated to the north of Haverfordwest and near to the A40. A small development which comprised a petrol filling station, local rural store and a range of industrial buildings to the west of the A40, of which one is the subject.
7. One of the substantive issues before the tribunal, the other being matters surrounding the 2015 rent on the subject property, was that in the appellant ratepayer's opinion, the Valuation Officer had failed to take account of the unique disadvantages that the property was said to possess. In his evidence, Mr Sharkie explained that the land in the appellant's demise was defined by the lease plan. He maintained that the physical assessment was incorrect because the appellant occupied significantly less land than had been assessed.
8. Both parties had acknowledged that the land on which the property was contained was not fully fenced to the extent that the yard area is open to neighbouring units and is immediately adjacent to the access of these units. For this part, the tribunal observed that Mr Allen had conceded a reduction of £250 RV to reflect that. The other issues that pertained to layout disadvantages included a lack of internal connectivity between the two warehouse buildings so that movement between them was possible by crossing the land as depicted in his appendix 4 of his bundle. He also pointed out that the property was extremely set back from the main road with no roadside visibility. Mr Allen had again accepted that an alteration was required in respect of the amount of land that was to be valued and the rate which should be applied. Mr Sharkie had measured the land to be valued at 550m² whereas Mr Allen considered the land to be valued, after adjustments, was 1150m². The adjustments came in the form of allowing to reductions each equally the size of the subject property (682m² x 2) which provided a calculation of 1144m², which was not far off his calculations in his valuation.
9. There was some debate between the parties about whether the hypothetical tenant would place less value on two units rather than one, but the tribunal was not persuaded that Mr Sharkie had provided sufficient evidence to suggest that this was the case.
10. The tribunal had listened to the issues about the two units and to issues of access of smaller units and their usage and decided that Mr Allen had not specified the area of land, simply that within the total plot on which the hereditament was situated, a proportion was not valued. The tribunal accepted the logic of this because land that deemed to be included could have been anywhere on the site. The tribunal accepted the VO's comment about a strip of land in front of the access strip which fronted the building next door, had a value because otherwise access to it would have been compromised. In view of the foregoing, the tribunal considered that Mr Allen had dealt with issues surrounding the VO's valuation of land. The debate about how the hypothetical tenant might

be affected confronted with issues such as access to roller shutter doors, but in the tribunal's opinion, there was no hard evidence to suggest that the VO had failed to be reasonable in this aspect of his case.

11. On the admitted facts, the tribunal was not persuaded that an end allowance to the appeal property should be granted because they had been applied elsewhere on other properties with similar layout issues. One of the properties referred to in Mr Sharkies' bundle (Appendix 4) referenced a property (Rafseal) in Bridgend whose assessment was adjusted by way of an end allowance of 7.5% to reflect circumstances very similar to those present at the subject property. However, the tribunal had recalled Mr Allen's cross examination of Mr Sharkie on precisely this point. The fact that this particular comparable property was situated too far the subject was a moot point but, in any event, it was considered inadequate in the tribunal's view to be of great assistance here. Moreover, the other comparable properties cited by Mr Sharkie were significantly larger than the subject and this disparity in their size affected value. As a corollary, the tribunal was not persuaded that these properties were of assistance to the tribunal.
12. It was accepted in an exchange of cross examination that nothing had changed at the subject property and that the ratepayers were aware of what they had taken on before the building was improved. Mr Sharkie referred to other properties in the area which were superior but attracted less value. However, the comparable properties that he had relied upon were larger than the subject and this would have had an effect. In view of the foregoing, the tribunal did not consider that Mr Sharkie had done enough to change the tribunal's mind on the subject as to whether end allowances should be given in this case.
13. The tribunal understood that the appellant ratepayers had occupied the property since 2009. Although the 2009 rent of £28,000 was regarded as an open market transaction, the renewed July 2015 rent was not considered to be on such terms. However, the VO was of the opinion the 2015 rent had value in this case, because the occupier had a vested interest in retaining the building. They had made improvements, which included the installation of toilets, heating and plumbing; insulated the walls and ceiling and put in front doors and fire escape doors. The total cost was said to be £49,000. The works were carried out in August/September 2009. The tribunal was reminded that case law had found that all evidence was admissible, but that good and bad of it fell to weight.
14. The tribunal considered there was no basis to examine the competency of the appellant when they agreed the 2015 rent with the landlord. There appeared no logical explanation to suggest that the tenant had failed to know what they had taken on and no hard evidence to suggest they had overpaid. It appeared to the tribunal, as Mr Allen had advanced in his evidence, that the tenant had accepted that the property was worth a rental of £28,000 in its unimproved condition which had increased to £30,500. As case law has established that a passing rent that transpired near to the statutory valuation date had primacy in terms of where the valuation exercise commenced, the tribunal had no basis to question the veracity or otherwise of this piece of information.
15. The tribunal did not consider that it was in receipt of sufficient hard evidence to cast doubt upon the veracity of the rent. The tribunal understood that the statutory definition of Rateable Value required the assumption of an annual tenancy. Whilst evidence of clean rents often formed the most reliable evidence, given the facts of this case, there were no grounds to suppose that the rent agreed in 2015 was in some way unreliable or not indicative of market rent. The

justification for this was due to the fact that no evidence had been introduced to show that market forces had shifted significant immediately prior to or after the level of rent had been settled and there was no hard evidence to show that the ratepayers had overpaid. The rent that they had agreed became the market rent and because they were not represented by professionals did not, in the tribunal's opinion mean they were not in the market.

16. In the final analysis, the tribunal was not persuaded that the appellant's case for a reduction in the existing RV to £19,500 had been made. The tribunal noted that Mr Allen had revised the list entry downwards by £250 to reflect issues surrounding fencing. In light of this the tribunal decided to allow the appeal but only to the extent Mr Allen had conceded in his case. The Tribunal orders the Valuation Officer to amend the 2017 Rating List to accord with its decision.

Decision: £26,000 Rateable Value with effect from 1st April 2017.