

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Mr A Sharkie representing Altus Group UK Ltd agent for B Braun Avitum UK Ltd

Appeal Property: Dialysis Unit and Premises, Unit 1, Riverside Park, Penarth Road, Cardiff CF11 8TT

Appeal number: 681535366932/285NV17/33

The Matter Appealed against: 2017 Rating List

Date of Hearing: 6 March 2024

Appearances: Mr A Sharkie and Mr M Allen for the Valuation Officer (VO)

Date of Decision: 3 April 2024

Decision of Tribunal: Appeal Allowed

Members of the Tribunal: Mr M Mason (Chairperson), Mr R Singh and Mr G Nechvatal

Tribunal Clerk: Mrs M S Minty and Mr S Kember

Introduction:

1. The appeal before the Tribunal followed a proposal made by Altus Group UK Ltd on behalf of the appellant in respect of the appeal property, received by the Valuation Office Agency (VOA) on 4 June 2021, following a Valuation Office Notice (VON) dated 21 March 2018. The agent asserted that the current Rateable Value (RV) of £89,000 with effect from 1 April 2017 was incorrect, on the grounds that he considered it to be disproportionate reflection of the change in rental values in the locality. He therefore sought reduction of the assessment of the RV to £1 with effect from 1 April 2017.

Legislation and Case Law

2. Reference was made to the Statute Law and the Definition of RV that was found within Paragraph 2(1) Schedule 6 to the Local Government Finance Act (LGFA) 1988.

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

3. Schedule 6 also provided for the Antecedent Valuation Date (AVD), the date by reference to which the RV of the hereditament was to be determined, 1 April 2015 for the 2017 Rating List.
4. Reference was also made to the following case law:

Vines Ltd v de Mauny (Valuation Officer) (2010) UKUT 322 (LC) (20 September 2010) – This case set a general principle that the onus was on the appellant to prove its case.

Ladies Hosiery and Underwear Ltd v West Middlesex AC [1932] 2KB 679 – This case provides for correctness before uniformity.

Lotus and Delta v Culverwell (Valuation Officer) and Leicester City Council (1976) RA - This case provided guidance on the weight to be attributed to rental and assessment evidence.

K Shoe Shop Ltd v Hardy (VO) & Westminster City Council (Lands Tribunal) (1980) RA 333 at 353 (Court of Appeal) (1983) RA 26; 3 ALL ER 609 – This case gave consideration of 'tone of the list' and the meaning of the word 'locality'.

Oldschool & Oldschool v Coll (VO) (1995) RA/312/1994 – This case set general principle on burden of proof and duty of the Valuation Officer.

BPP Holdings Ltd v Revenue and Customs Commissioners (2016) 227-245 – This case regarded full visibility for the appellant of HMRC's case, as well as compliance & non-preferred status for HMRC.

Telereal Trillium v K Hewitt (VO) (2018) EWCA Civ 26 – This case regarded duty of Valuation Officer and Upper Tribunal.

5. The following is not intended as a verbatim report of the proceedings, nor is it proposed to reproduce in full all the parties' evidence. The absence in this decision of a reference to any statement or item of evidence placed before it by the parties should not be construed as an indication that a statement or item of evidence has been overlooked by the Tribunal.

Summary of the evidence

6. From the evidence provided, the parties agreed that there was no involvement from Welsh Assembly Government (WAG) in relation to the appeal property's rent. The base value of £/m² of £52.50/m² was based on the submitted rental and comparable properties, plus a 20% uplift (1.2 factor) for office and plus a 10% uplift for air conditioning (1.1 factor). Therefore, the issue before the Tribunal was whether a 30% uplift (1.3 factor) should be applied for the quality of the subject property; increasing the £/m² which included the uplifts to £90.09/m². Mr Allen provided a proposed revised valuation of RV of £82,000 with effect from 1 April 2017. Mr Sharkie provided a proposed revised valuation of RV of £63,000 (amended from £61,000 due to clerical error in the area m² which should have shown an area of 915) with effect from 1 April 2017.
7. Regarding the remaining issue, reference was made to the following salient comparable properties:
 - Pentwyn Renal Unit 1-4 Croescadarn Close Avenue Industrial Estate, Cardiff CF23 8HE

- Unit 1 Mill Court, Goat Mill Road, Dowlais, Merthyr Tydfil CF48 3TD
 - Unit 2B Riverside Park, Penarth Road, Cardiff CF11 8TT
8. Mr Allen stated that the appeal property's landlord was Starburst UK Ltd and B Braun Avitum UK Ltd was the tenant. He considered that the subject property had been fitted to a high standard reflecting its use as a dialysis centre. The property stood in its own grounds, had adequate parking for its purpose and built specifically to the needs of the occupier. Internally the property had been fitted-out for the purpose of providing dialysis, with patient waiting and treatment areas, staff welfare areas, offices, and storage areas on the ground floor only with air conditioning throughout. There were no upper floors to the property. He felt that seeking to value the property on a straight industrial approach, with no reference to the overall nature of the property, was incorrect. The property had specific planning consent as a dialysis unit, which fell under class D1 which included health care centres, creches, day nurseries, school, and law courts. From this class a temporary change could be made to A1 shops, A2 financial and professional services, A3 food and drink or B1 businesses such as offices, R&D sites or industrial that could be carried on without disturbance to a residential area. As it stood the site had specific consent of its use, not for any other use such as B2 general industry or B8 storage and distribution, which was the category envisaged with a standard industrial approach.
 9. Mr Allen explained that it is accepted that the fit-out of the appeal property may have included items that were not rateable, such as oxygen lines and items specific to the nature of the occupation. However, the property must be valued as it existed in April 2017 when the list was formed. The property was rented as a bare shell, with all internal partitions, linings, oxygen lines, air conditioning etc installed by the tenant at their own expense. Fittings to the property such as partitions, staff welfare, office fit-out etc were part of the hereditament and were appropriate to be included in the calculation. There was no agreed split of the costs of fit-out for this property.
 10. In relation to the property of Pentwyn Renal Unit, Mr Allen stated that this was appealed and agreed in the 2017 List at a RV of £51,500, based on a basic rate value of £40/ m² with offices uplift as standard. There was no record of a modern rent available for which a comparison could be made.
 11. The 2017 List assessment for Unit 1 Goat Mill had not been appealed; however, it had been appealed and agreed for the 2010 List with no quality uplift. In the 2017 List, its RV of £53,500 was based on a basic rate of £32/m², with additions for air conditioning and office fit-out, and deductions for the lack of natural light internally. There was a 2013 rent on the property between the Welsh Ministers as landlord and Fresenius Medical Care as tenant, at a rent approximately £7000 over the level of value.
 12. The car sales site at Unit 2B had been agreed on an industrial approach, which reflected the lack of fit-out to the property (opened to the structure of the property). Although this property was developed at the same time as the appeal property, Mr Allen felt that the unimproved nature of the car sales site was not a good comparison to the much improved and fitted-out nature of the dialysis unit. The offices in the car sales area were valued at a factor of 1.2, as was standard for offices in industrial units. No inspection had been undertaken of this property, however, Mr Allen considered from his experience that an office in such units were not to the quality of those within the appeal property. A survey in February 2017 noted an acoustic tile ceiling and carpet tile floor only.
 13. Mr Allen explained that Mr Sharkie's approach was seen to be a straight approach of the scheme for the valuation being derived from the age and location, then adopting the

usually adopted elements for office uplift and air-conditioning, without having any regard to the rent for the property and the final stand back and look. Mr Allen's preferred valuation adopts a quality addition of 1.3 and without this would derive at a RV of £63,000, as against the £75,500 rent as of July 2016. He requested that the Tribunal determine the level of RV value to his preferred RV of £82,000, with effect from 1 April 2017.

14. Mr Sharkie described the appeal property as a modern SPF warehouse, fitted out with a typical office style finish to facilitate a dialysis treatment centre and was constructed in 2016. The unit was built as a joint venture between B Braun Avitum UK Ltd and the WAG, with the industrial building converted immediately upon completion. The rent was agreed at £75,500 with effect from 11 July 2016.
15. In relation to the property of Unit 1 Mill Goat, Mr Sharkie stated that this property was extremely similar to the appeal property, a modern SPF warehouse converted to a dialysis unit in conjunction with the WAG.
16. Mr Sharkie explained that at present an additional 30% uplift had been applied as an "Adjustment of quality". He contended this to be superfluous given the unit was in a scheme for properties no more than 4 years old at the material date, particularly where neither of the comparable Dialysis Units have had any such adjustment applied, and, with both comparable units having rents well in excess of the RVs applied, at £78,841 and £60,833, respectively.
17. With regard to the WAG investment of £1.2 million for the appeal property, Mr Sharkie stated that this was for the state-of-the-art dialysis equipment, partitions, services, finished fixtures and fittings none of which should be rateable. This property was of the expected quality of a modern unit with office fit out, identical to that seen in numerous other properties throughout Cardiff and surrounding areas, and no more so than the other dialysis units referenced in Merthyr and Cardiff. The comparable property in Merthyr Tydfil was also subject to a £2 million WAG investment and this property's RV did not have any uplifts applied beyond that of a standard office and air conditioning.
18. Mr Sharkie contended that the two identical comparable hereditaments set a precedent for valuation for such properties and the next-door units confirmed the development should be valued as such. He asked the Tribunal to apply remove the 30% uplift and confirm his proposed revised valuation of RV of £63,000, with effect from 1 April 2017.
19. During cross examinations, the salient points were noted:
 - Mr Allen confirmed that he had not inspected the properties of Pentwyn Renal Unit and Unit 1 Goat Mill and did not know the details of their settlements.
 - Mr Allen stated that he was not aware the planning for the appeal property was initially for a gym.
 - Mr Sharkie confirmed that he had obtained the photograph of Unit 1 Goat Mill from a press release.
 - Mr Sharkie confirmed that an uplift of 20% for office and an uplift of 10% for air conditioning had been applied to the comparable properties of Pentwyn Renal Unit and Unit 1 Goat Mill, but not the 30% uplift for quality.

Decision and Reasons

20. The only issue before the Tribunal was whether the 30% uplift proposed by the VO as an addition for quality of the appeal property was merited.

21. On examination of the appeal property, rental information and its comparable properties in relation to the tone of the list, the Tribunal found the best comparable properties were those referred to by Mr Sharkie. Mr Sharkie provided that Pentwyn Renal Unit 1-4 Croescadarn Close Avenue Industrial Estate, Cardiff and Unit 1 Mill Court, Merthyr were operated in the same manner as the appeal property with the expected quality for such use. No additional uplift had been applied for quality to those two properties.
22. The Tribunal also found that Mr Allen had stated Unit 1 Mill Court's rent was approximately £7,000 over the level of its value, and he was unable to support his contention of the additional 30% uplift having no knowledge of the details of settlements and no evidence of the standard of quality of Pentwyn Renal Unit and Unit 1 Mill Court.
23. Having examined all the evidence provided, the Tribunal concluded the preferred evidence and revised valuation for the appeal property was that produced by Mr Sharkie. Therefore, the Tribunal found that Mr Sharkie had dispersed his burden of proof.
24. In view of the above information and with the parties agreed base rate of £52.50/m², with an uplift of 20% (1.2 factor) for office, plus an uplift of 10% (1.1 factor) for air conditioning, the Tribunal determined that no additional uplift be applied for quality for the appeal property. Therefore, the Tribunal orders that the 2017 Valuation List for the appeal property, Dialysis Unit and Premises, Unit 1 Riverside Park, Penarth Road, Cardiff CF11 8TT, be amended in accordance with Mr Sharkie's proposed revised valuation of a RV of £63,000, with effect from 1 April 2017.