

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Mr Byron Mathews

Appeal Property: Workshop and Premises, Unit 10, Atlantic Business Park, Hayes Lane, Sully, Penarth, CF64 5AB

Appeal number: 695035550174/285NV17/93

The Matter Appealed against: 2017 Rating List

Date of Hearing: 6 March 2024

Appearances: Mr B Mathews and Mr M Allen, Valuation Officer (VO)

Date of Decision: 3 April 2024

Decision of Tribunal: Appeal Allowed in Part

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 Mr Mathews, the appellant, that was received by the respondent Valuation Office Agency (VOA) on 8th September 2021 and accepted as valid. The appellant asserted that the appeal property with a current rateable value (RV) of £12,500, should be shown as more than one assessment as there were two independent businesses; Momentum Fitness on the ground floor and Ad-Tech Europe Ltd situated on the upper floor. He proposed the existing entry should be divided into two entries within the 2017 Valuation List, with effect from 1st July 2020.
2. The VO and the Appellant had already agreed to the split of the appeal property with effect from 25th February 2021 and assessment of the ground floor gymnasium as being accurate, therefore the matter before the Tribunal was with regards to the base value (£/m²) used in the calculation of the RV of the upper floor of the appeal property. The appellant was seeking £45/m² and the VO sought £55/m². Parties also sought for the Tribunal to confirm a RV of £3450 based on £29.25/m² for the ground floor.
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.

Legislation and Case Law

4. 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."

5. 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.
6. Non-Domestic Rating (Alteration of Lists and Appeals) (Wales) Regulations 2005
7. 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.

Summary of the evidence

8. With the use of his supporting documentation and following an inspection of the appeal property by the VO, Mr Mathews stated the basis of the case centred around the period of 2017 to 2023.
9. The appeal property was classed as an industrial unit of a similar build to other comparable units nearby known as Atlantic Trading Estate, which Mr Mathews informed the Tribunal Members they were built by the same builder and within the same time frame as the appeal premises. Mr Mathews believed that the appeal property was being compared to other units at the former Vale Business Park which were not of the same build as the appeal property and appear to be offices not B1/8 Industrial Units with roller shutter doors.
10. The comparable units Mr Mathews evidenced had a base value of £45/m². Photographs showed the external build of both the comparable premises and the appeal premises having a similar build.
11. The comparable premises brought by Mr Mathews were as follows: -

Unit 5 Atlantic Point, Atlantic Trading Estate, CF63 3RF (133m²) had a RV of £5909

Unit 5 Atlantic Business Park (135 m²) has a RV of £7200

Mr Mathews contended that Atlantic Trading Estate had a base value of £45/m² against the appeal property's base value of £55/m², he stated that other units (approx. 140 units) in the locality, had varying rateable values all of which were lower than the appeal

property. He believed this affected his ability to rent out the properties at Unit 10, as the 22% increase when compared to other units within the locality, would prevent him securing a tenant. The additional uplift he contended also breached the £6000 RV threshold for small business rates relief meaning that any occupier would also be required to pay business rates, which he felt was unfair.

12. Mr Mathews considered that Atlantic Trading Estate to be a more desirable location than the appeal property as the units were less densely populated, had more parking spaces and benefited from fully lockable entry gates. Mr Mathews believed there should be parity between the developments and as such contended that the appeal property should have a lower RV in comparison to the comparable units presented to the Tribunal Members.
13. Mr Allen provided a background to the estate stating that the area had been developed over several years from early 2000s to approximately 2015 and there were several estates within the locality of Atlantic Trading Estate. Mr Allen noted that the RV appeared to be lower than that of the appeal property and could understand the appellant's reasoning to question his RV when compared to the other units in the locality.
14. Whilst acknowledging that there was a disparity of £45/m² vs £55/m² with the same basic structures and location, Mr Allen considered that the estate as whole may need to be reviewed, however, this may not be practicable due to the regulations relating to the closure of the 2017 valuation list. Mr Allen informed the Tribunal that any correction of the rating list could only take place from the effective date of the appeal and in relation to the appeal property only.
15. Mr Allen explained that his rental evidence had not been served in a timely manner, and not in accordance with Regulation 31 of the Non-Domestic Rating (Alteration of Lists and Appeals) (Wales) Regulations 2005, however, he confirmed that this had since been served, as a result this rental evidence could not be submitted to the Tribunal as evidence.
16. Due to the lack of rental evidence, Mr Allen sought evidence for where the reasonable rents lay at the AVD and concluded that the perceived rent for the estate was low and concluded that £60/m² for the size of property in question, would be a more appropriate value. In addition, he advised that the estate may need to be reviewed in general. Mr Allen said that he had put forward for the 2023 list to be reviewed and confirmed this would not affect the 2017 list for the reasons already stated.
17. Mr Allen contended that the principle established in the case of *Ladies Hosiery and Underwear Ltd v West Middlesex AC [1932]* that correctness before uniformity should be applied in relation to the appeal property. He submitted that the RV must reflect the rent that can reasonably be achieved and that he perceived to be correct in accordance with the calculations conducted by him. Mr Allen informed the Tribunal that just because other unit rents were low it should not be perceived as being correct.
18. Reference was then made to his preferred valuation for the appeal property which he considered showed the ground floor gymnasium was broadly acceptable to other gymnasium and the valuation for the upper floor unit was based on calculations for the perceived rents for the area as being £55/m².
19. Regarding the settled cases of comparable properties Mr Allen confirmed that the ratepayer at the respective units had agreed to a base value at £55/m². The comparable units were situated within the locality of the appeal property.

GND FLR Unit 11 Atlantic Business Park, Hayes Lane, Sully, Penarth, CF64 5AB and

20. In his view having considered the information available to him, Mr Allen contended that £55/m² was more correct for the appeal property than £45/m² and a tone had been established within the 2017 valuation list and asked that the Tribunal accepts this base value as the correct valuation for the appeal property.
21. During cross examinations, the salient points were noted:
- With regard to rental evidence having not been served correctly, parties were asked if they wished for an adjournment in order to present this evidence. Both parties declined.
 - Due to the similar names of the appeal property, the Tribunal Members sought clarification of the appeal property which Mr Mathews duly provided. Mr Allen asked whether the graph used in Mr Mathews presentation pack was used to transpose the figure of £45/m² back to the 2015 AVD date. Mr Mathews confirmed that this was to show the rising costs overtime. His main concern was that the parity between the neighbouring units was used in reviewing his case rather than the relative shifts in value as he felt that would be perceived as being fair and reasonable, even if this meant breaching the £6000 RV threshold if the whole site were reviewed.
 - Mr Allen confirmed that RVs were established on local rents and factors rather than National indices and confirmed that £55/m² to be more correct based on the information available to him for values at the AVD.
 - Mr Allen explained that the upper floor remained industrial use and therefore should be valued due to its nature and character and not as a gymnasium. Since the previous postponing of the appeal, Mr Allen confirmed that the case was passed to him for review and assessment which he carried out. Having gone back to basics and reviewing rental information available for April 2015, he contended that the £45/m² were not supported and made reference to a higher value of £60/m² increase of base value.
 - The Tribunal Members sought clarity with regards to making the sites comparable, there could potentially be an increase in the RVs of the other units on the estate. Mr Allen confirmed that if the RV was found to be too low, the Valuation Office Agency is duty bound to correct the error which would only apply from the date of correction. He confirmed that there would not be sufficient time to enable a full review of the estate for the 2017 list due to the regulations, however Mr Allen advised the estate will be considered for a review with regard to the 2023 valuation list. Mr Allen advised that where an appeal has been made, the error can be corrected in respect of the appeal property.
 - In view of reference having been made to £60/m², an increase in the base value, Mr Mathews confirmed he was seeking £45/m² and Mr Allen confirmed he was seeking a base value of £55/m².

Decision and Reasons

22. In relation to the matter of contention relating to the value attributed to the Upper Floor Unit 10, the Tribunal Members found it had to determine whether that area's RV would have achieved a base value of £45/m² or £55/m².
23. Having considered the evidence provided, the Tribunal noted that Mr Mathews concerns related to the values attributed to other comparable units on the estate within the locality of the appeal property. The regulations and case law provides that the Valuation Officer has a duty to correct an error, if found, to maintain an accurate Valuation List, it cannot place correctness before uniformity in these circumstances.
24. The comparator properties showed that £55/m² had been agreed and that these were in the immediate vicinity of the appeal property. Based on these comparisons the Tribunal determined that a base value of £55/m² to be fair for the appeal property.
25. From the information provided, parties had already agreed to confirm a RV of £3450 for the ground floor. The Tribunal confirmed the split of the hereditament and of the RV of £3450 for the ground floor as requested by the parties.
26. The Tribunal therefore orders that the Valuation List to be amended in accordance with the following: -
- MOMENTUM FITNESS, GND FLR UNIT 10 AT ATLANTIC BUSINESS PARK, HAYES LANE, SULLY, PENARTH, CF64 5AB - RV £3450 with effect from 25th February 2021.
 - AD-TECH EUROPE, 1ST FLR, UNIT 10 AT ATLANTIC BUSINESS PARK, HAYES LANE, SULLY, PENARTH, CF64 5AB – RV £6900 with effect from 25th February 2021.