

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Cooke & Arkwright agent for Trade Centre Wales

Appeal Property: The Trade Centre Wales & Preparation Department Units, Neath Abbey Industrial Estate, Neath Abbey, Neath SA10 7DR

Appeal numbers: 693036560247/537NV17/42
693036628340/537NV17/43
693036644831/285NV17/44

The Matter Appealed Against: 2017 Rating List entries

Date of Hearing: 27 March 2024

Appearances: Mr H Jones accompanied by Mrs J Shankland – Cooke & Arkwright
Mr C Preston for the Valuation Office Agency (the VO)

Date of Decision: 6 June 2024

Decision of Tribunal: Appeals Dismissed

Members of the Tribunal: Mrs B Martin (Chair), Mr G Nechvatal & Mr M Mason

Tribunal Clerk: Mrs S Gwilliam accompanied by Miss E Rowlands & Mr S Kember

Introduction:

1. Cooke and Arkwright submitted three proposals in February and March 2023 to the Valuation Office Agency against the 2017 Rating List entries on behalf of Trade Centre Wales (TCW). Since these proposals were not well founded, they were transmitted to the Valuation Tribunal for Wales as appeals and listed to a hearing on the 27 March 2024.
2. Briefly, the grounds of the three appeals were:
 - 693036644831/285NV17/44 proposed that the 2 entries – Car Showroom & Premises be merged with Workshop & Premises with effect from the 1 April 2017
 - 693036628340/537NV17/43 sought the Rateable Value (RV) for the Car Showroom & Premises be reduced from £167,000 to £1 with effect from the 1 April 2017
 - 693036560247/537NV17/42 – Car Showroom & Premises - stated that the RV £233,000 was inaccurate because of an alteration made by the VO on the 10 November 2021 and sought a reduction to £1.
3. For ease and to avoid repetition, the parties agreed that the three appeals should be heard as one.
4. *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

5. The valuations under consideration had been produced in accordance with Paragraph 2(1) Schedule 6 of the Local Government Finance Act 1988 which stated –

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.*
6. 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, was the 1 April 2015 for the 2017 Rating List.

Summary of Parties' Cases and Decision of the Tribunal

7. TCW is located on Neath Abbey Industrial Estate, Neath Abbey, Neath, on the outskirts of Neath town centre, 1 mile from junction 43 of the M4 motorway and immediately north of the A465. The A465 was described by the VO as a major arterial road linking towns such as Merthyr Tydfil, Tredegar and Ebbw Vale to Neath and Hereford, albeit 55 miles to the northeast of the subject property. Access from the A465 was via the east bound carriageway only through the industrial estate.
8. In accordance with the Non-Domestic Rating (Material Day for List Alterations) Regulations (as amended), as at the material date of the 1 April 2017, TCW comprised of a main car sales site, which consisted of a portal frame unit built in the 1990's, with surrounding land was used for car sales. The RV ascribed to the main sales site was £167,000.
9. The preparation centre comprised of several newer buildings constructed in 2015 together with an older 1960's industrial building.

10. TCW was inspected by the VO on the 6 October 2021, and it was established that the subject accommodation measured 2,649.16 m² gross internal area (GIA) and 2,244.74m² in terms of main space (ITMS). Furthermore, additional land immediately to the west of the site, was acquired between 2007-2008, mainly comprised the majority of the external vehicle display spaces. Prior to the inspection, the VO understood that there was 102 external vehicle spaces on the site, however it was established that there was a total of 389 external vehicle spaces. Based upon the above, the VO issued a Valuation Office Notice increasing the RV to £233,000 effective 10 November 2021.
11. The RV ascribed to the preparation centre on the 1 April 2017 was £81,000 but was subsequently increased to RV £136,000 effective April 2022.
12. MTR Bailey Trading Limited held the long leasehold interest and granted short-term leases commencing September 2016 to TCW. MTR Bailey Trading Limited owns TCW, so the passing rent of £437,520 per annum for the Car Showroom and £140,350 per annum for the Workshop area was disregarded as it was not an open market rent.
13. Since the Agent contended that the main sales site and the preparation centre should be assessed as one unit, he proposed that the merged assessment should be valued at £55m² and £150 per vehicle space, which equated to £265,000 RV effective 1 April 2017.
14. In support of their contentions, both parties referred to the Woolway (VO) v Mazars (2015) UKSC (hereafter stated as Mazars) and FC Brown Steel Equipment Ltd v Hopkins (VO) [2022] UKUT 51 (LC). The Tribunal was aware that the Mazars case clarified the principles governing the identification of hereditaments for rating purposes, emphasising the importance of both geographical and functional tests in determining whether separate premises should be treated as a single hereditament. Mr Jones considered that the main car sales area and the preparation area should be merged as a contiguous, functionally essential single hereditament, whereas the VO believed that the proposal to merge the two properties failed the geographical and subordinate functional test.
15. The Agent explained that the main car sales site and car preparation centre were crucially linked by exclusive legal right to be used as one with car sales on part and car preparation on the other. Operating the site in that way made the site more valuable and economic. If each part was separately operated for the current use, each would need sales, preparation and administration thereby reducing the number of cars held on site and the offices could not be used in isolation for car sales.
16. The Agent explained that the service road situated between the main car sales area and preparation area was in the ownership of Neath Port Talbot County Borough Council. Mr Jones maintained that TCW had specific rights to use it, and as far as he could establish nobody else had those rights; it did not serve any other property with the exception of access to a sewage pumping station. The various leases granted rights to enable TCW access both the main car sales site and preparation centre.

17. The VO counterargued that the two hereditaments should remain separately assessed and in addition to the two aforementioned rating cases also referred to the case *Edwards (VO) v BP (Llandarcy) Ltd* [1974] LT RA 1.
18. The Tribunal was aware of the principles drawn from the *Mazars* decision which stated that the primary test was geographic. However, where the geographic test failed, a secondary functional test may nevertheless be considered to enable them to be treated as a single hereditament, but this only applies where the use of the one was necessary to the effectual use of the other. The effectual enjoyment of the other depended not on the business needs of the ratepayer but on the objectively ascertainable character of the subjects.
19. Whilst having regard to the case law provided, the Tribunal noted that Lord Sumption at paragraph 12 of the *Mazars* decision stated *"If adjoining houses in a terrace or vertically contiguous units in an office block do not intercommunicate and can be assessed only via other property (such as a public street or common parts of the building) of which the common occupier is not in exclusive possession, this will be a strong indication that they are separate hereditaments."*
20. Furthermore, Lord Neuberger at paragraph 42 of *Mazars* stated *"Normally at any rate, both as a matter of ordinary legal language and as a matter of judicial observation, a hereditament is a self-contained piece of property (i.e. property all parts of which are physically accessible from all other parts, without having to go onto other property) and a self-contained piece of property is a single hereditament"*.
21. In relation to the geographical test, the main car sales area and car preparation area were separated by an unadopted road in the ownership of Neath Port Talbot County Borough Council. The Agent contended that the only other users with entitlement to utilise the road would be those visiting the sewage treatment works. The Tribunal noted that there was nothing in place restricting access to anyone else whom may wish to use the road, which was confirmed by Mr Jones during cross examination. Consequently, the Tribunal opined that the main sales area and the vehicle preparation area were geographically distinct.
22. Turning its attention to the functional test, the Tribunal considered the cases of *Mazars*, *Edwards (VO) v BP (Llandarcy) Ltd* [1974] LT RA 1 and *FC Brown Steel Equipment Ltd v Hopkins (VO)* [2022] UKUT 51 (LC). Lord Sumption stated within the *Mazars* decision, *"Secondly, where in accordance with this principle two spaces are geographically distinct, a functional test may nevertheless enable them to be treated as a single hereditament, but only where the use of the one is necessary to the effectual enjoyment of the other."*
23. The Lands Tribunal *BP (Llandarcy) Ltd* case stated, *"Consideration of these two cases leads us to the conclusion that the two separate properties which are not directly and physically contiguous could not be regarded as a single hereditament unless firstly, there is an essential functional link between the two parts and secondly there is a substantial degree of propinquity..."*.
24. The Agent opined that TCW, as a car supermarket of that size, could not operate effectively without a preparation centre and aftersales on site; he was unaware of

any sites where the car preparation parts were separately assessed since both elements are vital intrinsic parts of the concept of high-quality preparation and aftercare in the running the sales. However, the Tribunal disagreed and considered that vacant and to let, both properties were capable of separate occupation; they were occupied for different purposes, and in the Tribunal's opinion, neither was essential to the effectual enjoyment of the other.

Consequently, the first appeal was dismissed.

25. The second and third appeals related to the Rateable Value ascribed to the Car Showroom and Premises. The second appeal sought a reduction from RV £167,000 to £1 effective 1 April 2017. The third appeal sought a reduction to £1 and appealed against the Valuation Officer's Notice which increased the RV to £233,000 on the 10 November 2021. The detailed reasons for both appeals stated that the assessment was incorrect, excessive, unfair and bad in law.
26. The VO stated that car supermarkets are a national class categorised within the VOA Rating Manual into varying types, dependent upon the size of the supermarket and amount of land used for display and storage. It was VO's opinion that the subject property fell between type 3 (medium shed with extensive land – accommodation between 2,501 - 4,999m²) and type 4 (small shed with extensive land – accommodation between 500 - 2,500m²) and as such he considered those car supermarkets in type 3 and 4 to be most comparable.
27. The VO had assessed the car showroom at £62.50m² and £200 per vehicle space which the Agent considered to be excessive and mooted £55m² and £150 per vehicle space as correct.
28. The Tribunal considered the comparables cited by both parties and considered that those comparables categorised as a car supermarket either a type 3 or type 4 to be of the most assistance in trying to establish a value, since they were of a similar size to that of the subject property. Whilst the Members appreciated that the evidence for car showrooms was of assistance, they believed that evidence of the same mode and category was the most useful in order to establish a value for the appeal property.
29. It was noted that those properties categorised as either a type 3 or type 4 car supermarket were valued between £65.00-£85.00m² and between £150-£240 per vehicle space which reflected RVs of between £164,000-£345,000.
30. Both parties agreed that the buying of a car was a considered purchase which would not rely entirely on passing trade, however, the Members determined that the prominent location of the appeal property clearly visible from a major trunk road, situated approximately just one mile from the M4 motorway was a clear advantage to that of the other comparables cited.
31. Therefore, after fully considering both arguments, the Tribunal accepted the unit rates and vehicle space rates proposed by the VO were not unreasonable in estimates of value, and as such confirmed the existing RV of £233,000. Accordingly, the appeals were dismissed.