

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Altus acting as agent for AF Thomas & Sons Ltd

Appeal Property: Unit 1A Mendalgief Retail Park, Docks Way, Newport NP20 2NY

Appeal number: 693533575128/285NV17/48

The Matter Appealed Against: 2017 Rating List

Date of Hearing: 5 February 2025

Appearances: Mr A Sharkie, Ryan (formerly Altus Group) for the appellant
Mr A Morse for the respondent Valuation Officer

Date of Decision: 5 March 2025

Decision of Tribunal: Appeal allowed in part

Members of the Tribunal: Mr H Pattrick (Chairperson), Mr R G Harris & Mr G Nechvatal

Tribunal Clerk: Mrs S Gwilliam

Introduction

1. The subject appeal dated the 4 July 2019 sought the appeal property's entry in the 2017 Rating List be reduced from £64,000 Rateable Value (RV) to £1 RV with effect from 1 April 2017 on the following grounds –

“the rateable value shown in the rating list on the revaluation date was inaccurate.

The rateable value shown in in the list for a hereditament was inaccurate on the date the list was compiled: Following revaluation on 01 April 2017 it is our opinion that the Rateable Value as applied to the subject premises is incorrect, contrary to law and a disproportionate reflection of the change in rental values in the locality between the dates 01 April 2008 and 01 April 2015. We therefore seek reduction of this assessment with effect from 01 April 2017 to £1.00”

2. The valuation 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.

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, which was 1 April 2015 for the 2017 Rating List.
4. Case Law referred to in the appeal –
 - Lotus and Delta v Culverwell (VO) [1976] RA 141
 - K Shoe Shops Ltd v Hardy (VO) & Westminster City Council (Lands Tribunal) (1980) RA 333 at 353 (Court of Appeal) (1983) RA 26
 - Oldschool & Oldschool v Coll (VO) (1995) RA/312/1994
 - Vines Ltd v de Mauny (Valuation Officer) (2010) UKUT 322 (LC)
 - BPP Holdings Ltd v Revenue and Customs Commissioners [2016] 227-245
 - Telereal Trillium v K Hewitt (VO) [2018] EWCA Civ 26
5. *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.*
6. The subject property constructed circa 1990 was described as a typical retail warehouse which measured 433.9m². It was fitted out with a typical finish included retail and ancillary storage/office areas. It is located at the end of the western terrace on Mendalgief Retail Park, a small estate of 6 units, on Docks Way to the south of Newport. At the material date 1 April 2017, Next Clearance and Argos occupied the neighbouring units on the western terrace; eastern terrace was refurbished circa 2014 and the occupants included TK Maxx, Pets at Home and Smyths Toys. The subject unit was assessed at £125m² which equated to £64,000 RV effective 1 April 2017.

Parties' submissions

7. Mr Sharkie explained to the Tribunal that the lease on the appeal property was agreed on the 20 February 2015, just six weeks prior to the AVD and was an open market new letting between two unconnected parties. He outlined the terms of the ten-year lease with an initial rent of £41,708.34 and a stepped rent from year 4 of £73,500 with a rent review/tenant break option at year 5. Based on these figures, Mr Sharkie analysed the rent, less the mezzanine which was in situ and included within the lease, at £42,637.08, which equated to £98.40m², rounded down to £97.50m².
8. The agent considered that the rent should be analysed to the break date at year 5 only as it was a penalty free incentive which was deliberately included by the tenant. Whilst the appellant seriously considered activating the clause around 9 months before the break date, it did not.

9. In respect of the fitting out costs as applied to the VO's valuation, Mr Sharkie stated that there were no refurbishments or improvements conducted to the property since the previous occupier, Dreams Beds, had vacated and in support referred to a photograph of a typical Dreams showroom.
10. Referring to rental evidence supplied by the VO, the agent argued that there were differences in the way these valuations were calculated.
11. Mr Sharkie considered that the rental evidence and comparison of the different units supported his view that the appeal property should be assessed at £97.50m² £52,500 RV with effect from 1 April 2017
12. Mr Morse informed the Tribunal that the occupiers of the property, A F Thomas & Sons, returned a Form of Return which included the terms of the 10-year rental agreement such as the stepped rent over the first five years and the cost of the improvements to the property since taking it over specified as being £100,000 on fit out.
13. The VO explained that whilst the subject rent was agreed very close to the AVD, the deal forming the 10-year letting was full of complications. The analysis of the incentives plus the issue on expenditure on improvements both required arithmetical calculation to arrive at the required consistent level of rent to calculate the RV. He opined that analysing the incentives over a 5 or 10-year period both carried equal merit and should both be considered to form a balanced view of the transaction.
14. Mr Morse calculated the incentives using varying scenarios:
 - Consideration of the incentives and also the expenditure over a 5-year period to break clause (minus the mezzanine) equalled £51,250 or £118m²
 - Consideration of the incentives and also the expenditure over the 10-year period (minus the mezzanine) equalled £55,800 or £128m²
 - Rental adjustment over the 10-year period of the lease but ignoring any impact of the tenant's expenditure on improvements (minus the mezzanine) equalled £49,095 or £113.1m²
15. Furthermore, the VO considered settlement evidence from the other properties located on Mendalgief Retail Park. The assessments on the neighbouring properties of Units 1B and 1C had not been challenged. Agreements had been reached with other national rating agents on the larger units such as Unit 2 at £95m², Unit 3 at £115 and Unit 4 at £105 m². Accordingly, the VO believed that there was an established tone of values on the estate.
16. As a consequence of his calculations, Mr Morse proposed an amended £60,000 RV based on the unit rate of £115m² with effect from the 1 April 2017 and requested the Tribunal allow the appeal in part.

Decision

17. The Members of the Tribunal considered very carefully all the evidence presented by the parties at the hearing, both written and oral, before arriving at its decision and would begin by expressing their appreciation to the parties for the manner in which they conducted themselves during the proceedings.
18. At the hearing the VO confirmed he conceded that a reduction to £60,000 was warranted based upon a unit rate of £115m² whereas the agent considered that the unit rate should be reduced to £97.50m² which equated to £52,500 RV with effect from the 1 April 2017.
19. The Tribunal is aware that all Non-Domestic property is required to be entered in the 2017 Rating List and must be valued in accordance with the statutory definition of Rateable Value, as contained in paragraph 2 (1) of Schedule 6 to the Local Government Finance Act 1988, as amended which determines that the appeal hereditament must be valued by having regard to rental values achieved as at the Antecedent Valuation Date (AVD), the 1 April 2015, whilst looking at the physical circumstances of the property as at the Material Day, 1 April 2017
20. The rent set on the appeal property at the onset of the ten-year lease was £41,708.34 which applied for the first three years from the 20 February 2015; from year 4 onwards the rent increased to £73,500. The agent considered that the rent should be analysed to the break date at year 5 and considered that the fit-out costs supplied by the appellant were incorrect and should be completely disregarded.
21. The Tribunal noted that the VO had provided 3 different scenarios, two of which included a £50,000 fit out analysed over a 5 and 10-year periods which resulted in unit rates of £118m² and £128m² respectively; the third scenario analysed over a 10-year period and ignored any expenditure on improvements which equated to £113.1m².
22. The Members considered the VO's and agent's comments regarding other units located on the retail park. It was noted that two larger neighbouring units on the western terrace were assessed at £125m² and had not been challenged. The unit rates applied to the considerably larger units located on the east terrace were agreed with national agents at unit rates of between £95m²-£115m². The Tribunal agreed with the VO that it appeared a tone of value had been set.
23. The Tribunal was aware that the burden of proof falls to the appellant to prove that the entry in the Rating List was incorrect and, in this instance, it was not persuaded that the unit rate of £115m² was excessive.
24. Consequently, the Tribunal Ordered that the RV in respect of Unit 1a Mendalgief Retail Park, Docks Way, Newport NP20 2NY be amended in the 2017 Rating List to show £60,000 RV with effect from the 1 April 2017.

Appeal allowed in part