

Appellant: Border Garage (Welshpool) Limited

Appellant's Address: Vehicle Repair Workshop and Premises, Border Garage, Coed-Y-Dinas, Welshpool, SY21 8RP

The Matters Appealed against: 2017 Non-Domestic Rating Compiled List entry and Valuation Officer's Notice of Alteration

Date of Hearing: 14 December 2018

Appearances: Mr J Hart of Hart Commercial Surveyors on behalf of the appellant and Mrs M O'Connor represented the Valuation Officer (VO)

Date of Decision: 22 January 2019

Decision of Tribunal: Appeals Dismissed

Members of the Tribunal: Mr E G L Moore (Chair), Mr G E Evans and Mr A J Park

Tribunal Clerk: Mr R Williams

Introduction: The subject proposals were made on the 8 June 2018 challenging the Compiled List entry of the Vehicle Repair Workshop and Premises, Border Garage, Coed-Y-Dinas, Welshpool, in the 2017 Non-Domestic Rating List at £22,000 Rateable Value (RV) with effect from the 1 April 2017, and the VO's Notice of Alteration increasing the appeal hereditament's assessment to £28,750 effective from 1 February 2018.

The grounds of appeal as contained in the subject proposals were as follows:

Appeal Number 685030775820/192NV17/23

*"The Rateable Value altered to £1 with effect from 01-Apr-17.
The rateable value shown in the Rating List was inaccurate.
The current assessment is incorrect, excessive and bad in law and should be reduced to rateable value £1."*

Appeal Number 685030775855/192NV17/22

*"The Rateable Value altered to £1 with effect from 01-Feb-18.
The rateable value shown in the list by reason of an alteration made by the valuation officer on 01-Feb-18 is inaccurate..
The current assessment is incorrect, excessive and bad in law and should be reduced to rateable value £1."*

The following is a summary of the cases presented 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.

The Appellant's Case

Mr Hart submitted to the Tribunal copies of his presentation, which referred to the following legislation and case law:

- *Schedule 6 2(7) of the Local Government Finance Act 1988*
- *Schedule 6 2(1) of the Rating (Valuation) Act 1999*
- *The Non-Domestic Rating (Alteration of Lists and Appeals) (Wales) Regulations 2005*
- *Lotus & Delta Ltd v Culverwell (VO) & Leicester City Council (LT) (1976) 239 EG 287*
- *Hodges Ltd v Howells (VO) (RA/291/1992)*
- *H J Banks & Co and Anthony Speight v Colin Robert Snowball (VO) (LT) (RA/239, 239-334 & 373-375/1995)*
- *Scottish & Newcastle Retail Limited & Allied Domecq Retailing Limited v R F Williams (VO) (Court of Appeal) (2001) (RA/480/1993 & RA/484/1993)*
- *W H Smith & Son Ltd v Clee (VO) (LT) (1978) R.A. 93*

He reported that the issue of dispute between the parties was the unit price to be adopted in respect of the appeal hereditament.

The appellant explained that the appeal hereditament was located approximately 2 miles south of Welshpool on the A458 in the hamlet of Coed-Y-Dinas in North Powys. The subject property was described and predominantly used as a vehicle repair workshop and premises, which also had a petrol forecourt with small throughput and sold some second hand cars.

The appeal hereditament was originally built in the 1950's as a petrol filling station and garage, however due to competition from multinational companies selling petrol and cars, the market or demand for second hand cars declined, and as a consequence, the surplus showroom space at the premises was now predominantly being used for car repairs.

Mr Hart provided the statutory basis of valuation, as defined in Paragraph 2(1) of Schedule 6 of the Local Government Finance Act 1988, as amended by Section 1(2) of The Rating (Valuation) Act 1999:

"Rateable Value is defined to be an amount equal to the rent at which is it estimated the hereditament might reasonably be expected to let from year to year on the assumption that:

- a) The tenancy begins on the day by reference to which the determination is to be made;*
- b) 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 tenant undertakes to pay all usual tenants rates and taxes and to bear the cost of repairs and insurance and the other expenses (if any) necessary to maintain the hereditament in a state to command that rent mentioned above."*

He referred to the rent passing on the appeal hereditament and commented that it was a 20 year FRI lease with effect from 25 March 1988, which increased from £14,000 per pa to £16,000 pa on review on the 25 March 2018 subject to a nil increase at 25 March 2013.

In his analysis the appellant confirmed that the passing rent of £16,000 devalued to £18/m2 and that a new building was constructed in 2016 following a fire in 2014. The shop area was included in the throughput part of the RV and was included in the rental analysis. A value of £1,000 had also been applied to the forecourt canopy, which again was included in the throughput RV.

Mr Hart referred to the Lands Tribunal case in respect of *Lotus & Delta v Culverwell (VO) and Leicester City Council ((1976) 239 EG 287)*, where the Lands Tribunal established that when considering the weighting of evidence, where the hereditament which is the subject of consideration is actually let, that rent should be taken as the starting point.

Accordingly, he opined that the rent passing of £16,000 pa from 25/03/2013, two years prior to the Antecedent Valuation Date (AVD), devaluing to £18/m² was a good starting point in comparison to the price of £27/m² and £33.15/m² as adopted by the VO in her valuations.

He also challenged the VO's decision to enter the appeal hereditament in valuation scheme 346645, which was described as:

"The value is applicable to industrial type property situated in Welshpool that are not on an industrial estate. They are built in post 1950s style but not to modern standard. The value is also applicable to properties build before 1950. The value is not applicable to units greater than 5000m². Parts of the property with an eaves height greater than 7m may have an increased value."

The appellant commented that the appeal hereditament is not located in Welshpool and that it would be expected that rental prices would be lower in a rural location, as demonstrated by the passing rent. The question raised therefore was whether the subject property should be valued in accordance with this scheme.

Mr Hart was of the view that the appeal hereditament should be entered in valuation scheme for rural locations in North Powys: 337286 which states: *"The value is applicable to industrial type property situated in Llanidloes, and villages and rural locations of North Powys (formerly Montgomeryshire), that are not on an industrial estate. They are built in post 1950s style but not to modern standard. The value is also applicable to properties built before 1950. The value is not applicable to units greater than 5000m². Parts of the property with an eaves height greater than 7m may have an increased value."*

He pointed out that there are 148 properties included within this scheme and referred to the following in support of his contention:

Timber Yard, Doll Street, Machynlleth, SY20 8BQ , 561m² at £21/m² and as Mid Wales Storage And Distribution, Doll Street, Machynlleth, SY20 8BQ, which increased to 818m² at £16/m². Interpolating the subject area of 724m² between the two would result in a price of £17.82/m², which was comparable to the devalued rent of the appeal hereditament £17.63/m² and would stack up with other rural values.

Fairview Service Station, Guilsfield, Welshpool, SY21 9ND, was within the same rural scheme and was located approximately 3 miles outside Welshpool on a 'B' road in a built up village location, more than a hamlet, with a population of 1,750 in 2011.

Cambrian Training at Charlies Stores, Coed-Y-Dinas, Welshpool, SY21 8RP, was valued in a scheme for rural offices (424247) albeit it was an office not a workshop. It was located in the same post code area as the appeal hereditament.

The appellant reported that during discussions with the VO regarding 2010 Rating List appeals in respect of petrol filling station assessments in Welshpool, he made the VO aware that those assessments had received a 5% end allowance due to the opening of Tesco, Smithfield Road, Welshpool SY21 7BL, on 14 March 2011. He confirmed that his statement was rebutted as it was argued that the appeal hereditament was not affected due to its different market and rural location.

As a general observation, Mr Hart suggested that it would stand to reason that land and property prices were considerably lower in the subject location of a hamlet rather than in Welshpool town centre, which would affect the market forces of rental levels. Based on those points, he could see no reason to deviate from the fact that the rental evidence on the appeal hereditament supports the level of a correct open market value.

Accordingly he proposed that the assessment in respect of the appeal hereditament should be valued in accordance with the passing rent and rural scheme ref 337286. In respect of the modern workshop he has applied £20.40/m2 less 2.5% for no heating in accordance with scheme 335617 – rural locations in North Powys, not on industrial estates, built to a modern standard e.g. Tanat Supplies, Llanrhaeadr Ym Mochnant, Oswestry, Shropshire, SY10 0AD 764m2 at £20.40/m2. Valued on VOA scheme ref 337286 & 335617

Floor Description	Area/m2	Price/m2	Value
Ground Workshop	97.62	£18.00	£1,757
Ground Internal Storage	22.84	£17.55	£401
Ground Showroom	84.92	£21.06	£1,788
Ground Office	35.68	£21.06	£751
Ground Public Toilets	14.68	£21.06	£309
First Works Office	22.22	£11.70	£260
First Works Office	7.5	£11.70	£88
First Internal Storage	30.3	£11.70	£355
Ground Workshop	408.78	£19.97	£8,163
	724.54		£13,873
Additional Details			
Description	Area/m2	Price/m2	Value
Petrol Forecourt and Shop	0	£0.00	£4,950
Vehicle Spaces	12	£90.00	£1,080
Unsurfaced, Fenced Land	668	£1.50	£1,002
Additions Sub Total			£7,032
Total value:			£20,905
RV			£20,750

In conclusion Mr Hart requested that the Tribunal confirm the revised assessment of £20,750 RV in respect of the subject appeals made against the Vehicle Repair Workshop and Premises, Border Garage, Coed-Y-Dinas, Welshpool, SY21 8RP.

The VO's Case

Mrs O'Connor submitted copies of her presentations to the Tribunal which referred to the following legislation and case law:

- *Schedule 6 2(7) of the Local Government Finance Act 1988*
- *Schedule 6 2(1) of the Rating (Valuation) Act 1999*
- *Vines Ltd v de Mauny (VO) (2010) UKUT 322 (LC)*
- *Lotus & Delta Ltd v Culverwell (VO) & Leicester City Council (LT) (1976) 239 EG 287*

She concurred with Mr Hart that the sole issue in dispute between the parties was the unit rate to be adopted in respect of the appeal hereditament's valuations at Compiled List and following a VO's Notice of Alteration.

The VO reported that the basis of valuation was defined in paragraph 2(1) of Schedule 6 to the Local Government Finance Act (LGFA) 1988, as amended by section 1(2) of The Rating (Valuation) Act 1999.

Mrs O'Connor reported that the appeal hereditament consisted of buildings constructed in the 1950s along with a workshop erected in 2016 following a fire. The ground workshop and internal storage area were unheated, this however did not affect the valuations. The subject property was located some 2 miles outside Welshpool town centre on the main arterial route to Newtown and Mid Wales with good access to the A483.

She referred to the rent passing on the appeal hereditament at £16,000, which was reviewed in 2013 with a nil increase and which does not reflect the larger more modern unit to the rear as the review was pre fire damage in 2014. Mr Hart analysed the rent to £18/m² and was of the opinion this tonal value should be applied. However, she highlighted the fact that the rent passing was two years prior to the AVD and was of the view that greater weight should be applied or placed on rents falling in the locality and closer to AVD.

In support of her contention, the VO referred to her rental summary which she opined supported her contention that a correct tonal value of £27/pm² and £33.15/pm² had been assigned to the subject property pre and post erection of new workshop in order to arrive at the revised assessments of Compiled List at £22,000 RV, effective from 1 April 2017, and £28,750 RV, following alteration to the List, effective from 1 February 2018.

She commented that the rent passing on Unit 4 Severn Farm Industrial Estate, Welshpool, was on the 22 April 2015, almost exactly on the AVD, and which supported the tone adopted on the newly constructed unit to the appeal hereditament. She added that the values on an industrial estate would be better in comparison to a standalone unit.

Vintage & Classic Car Repairs, The Garage, Brook Street, Welshpool, supports the tone adopted in respect of the appeal hereditament at £27/m². Its location was similar to the subject property as it was a former petrol filling station used for car sales and was not located in a built up area.

Redwood, Leighton, Welshpool, had a rent passing 5 months prior to the AVD with a unit value which supported the tone adopted on the newly constructed unit to the appeal hereditament. This property was similar in size and located a similar distance to the subject property outside and to the other side of Welshpool

Mrs O'Connor also challenged the appellant's contention that the appeal hereditament was not included in the correct valuation scheme. She declared that scheme reference 337286, which was for industrial type properties situated in Llanidloes and villages and rural location in North Powys that were not on an industrial estate, was correct and she contended that the subject property should remain in the current scheme as it fitted the description for industrial type properties in Welshpool but not located on an industrial estate. She reiterated that it was located some two miles outside of Welshpool Town Centre on a main arterial route and not in a village or rural location.

She challenged the comparable evidence presented by Mr Hart as follows:

Timber Yard, Doll Street, Machynlleth, was recently reduced to Zero RV due to its current uneconomic condition. She was of the opinion that this property was not comparable as it was a different type of building in terms of age and quality, located some 39 miles away in a rural location and that Machynlleth could not be compared to Welshpool.

Fairview Service Station, Guilsfield, Welshpool, was now predominantly a workshop and car sales as the petrol station ceased operating some time ago. She was of the opinion that this property was entered in the correct scheme as it was located in the centre of Guilsfield village and therefore would not benefit from passing trade in the same way as the subject property due to its more rural location.

Cambrian Training at Charlies Stores, Coed-Y-Dinas, Welshpool, was actually an office and therefore a different mode and category of occupation. However this property was located across the main road from the appeal hereditament and appeared to be reflected in the wrong valuation scheme and should be in scheme 384926, which would adopt the same tone as it currently does.

Having considered Mr Hart's comparable properties, the VO was of the opinion that those properties were not comparable and would therefore attract a different rental market hence the difference in price adopted.

In conclusion and having regard to the rental summary she had provided, Mrs O'Connor was of the opinion that the tone adopted in both valuations in respect of the Compiled List entry and in respect of the VO's Alteration of the List were fair and reasonable. Accordingly she requested that the both appeals were dismissed.

At the conclusion of the hearing, the Tribunal decided to reserve its decision.

The Reasons for Decision

Having considered all the evidence placed before it the Tribunal decided as follows: -

The Tribunal was aware that the issue in dispute was what unit rate should be adopted in respect of the appeal hereditament and which valuation scheme should the subject property be entered into.

The subject appeals were against the appeal hereditament's entries in the 2017 Non-Domestic Rating List at Compiled List entry of £22,000 Rateable Value and £28,750 Rateable Value following the Valuation Officer's Alteration of the List, effective from 1 February 2018.

The full statutory definition of Rateable Value and the basis of valuation for the appeal hereditament were contained within paragraph 2 (1) of Schedule 6 to the Local Government Finance Act 1988, as amended by Section 1(2) of the Rating (Valuation) Act 1999.

The definition determines that the Rateable Value of a non-domestic hereditament 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, if the tenant undertook to pay all usual tenant's rates and taxes and to bear the cost of the repairs and insurance and other expenses, if any, necessary to maintain the hereditament in a state to command that rent.

The revised assessment contended by the appellant resulted in a Rateable Value £20,750 in respect of both appeals based on a rent passing on the appeal hereditament and being entered into valuation scheme 337286. The Valuation Officer however considered that the revised assessment sought by the appellant was unreasonable taking into account the rental evidence available of comparables within the locality of the subject property and that it was correctly entered within valuation scheme 346645.

The appellant had regard to the rent passing on the appeal hereditament which was effective from 25 March 1988 for 20 years on a FRI lease, which increased from £14,000 to £16,000 on review on the 25 March 2018 subject to a nil increase at 25 March 2013. The rent of £16,000 devalued to £18/m².

The VO however referred to a rental summary which she opined supported her contention that a correct tonal value of £27/m² and £33.15/m² had been assigned to the subject property pre and post erection of new workshop in order to arrive at the revised assessments of £22,000 Rateable Value, effective from 1 April 2017, and £28,750 Rateable Value, effective from 1 February 2018.

In referring to case law in respect of *Lotus and Delta v Culverwell (VO) & Leicester City Council (1976)* which states the six propositions to apply when considering the weighting of evidence, the Tribunal was persuaded more by the argument of the Valuation Officer.

The Tribunal in taking account of the above case found that the rent of the appeal property in 2013 was not a good indicator, as the rent was passing two years prior to the Antecedent Valuation Date and the Tribunal panel was more persuaded by the rental evidence available from other similar property in the locality.

The comparable assessments referred to by Valuation Officer were from the same locality and contained properties that were similar in mode, size or use as the appeal hereditament. Significantly, the Tribunal considered that the comparable evidence submitted by the Valuation Officer on or around the Antecedent Valuation Date supported the unit price £27/m² and £33.15/m² adopted in respect of the subject property.

The Tribunal was also persuaded by the Valuation Officer that the appeal hereditament was entered within the correct valuation scheme 346645, as the subject property was situated in Welshpool, built in the 1950s, not of a modern standard and not situated an industrial estate

The Tribunal considered that the burden of proof lay with the appellant, who had failed to substantiate that a lower assessment, than that which had been adopted by the Valuation Officer, was warranted.

Additionally, the rental evidence provided by the appellant, in support of his contention for a reduction in the rateable value of the appeal hereditament, had been overturned by the weight of evidence of other comparable properties in the locality.

Accordingly, the Tribunal confirm the present entries appearing in the 2017 Rating List in respect of the Vehicle Repair Workshop and Premises, Border Garage, Coed-Y-Dinas, Welshpool, at £22,000 Rateable Value with effect from the 1 April 2017 and £28,750 with effect from 1 February 2018, and therefore the subject appeals were dismissed.

Certified a true copy on 22 January 2019