

TRIBIWNLYS PRISIO CYMRU – VALUATION TRIBUNAL WALES

Appellant: CBRE Ltd agent on behalf of B&M Retail Ltd (occupier)

Appeal Property: Units 2-4, Deeside Retail Park, Chester Road East, Shotton, Deeside CH5 1SA

Appeal number: 683530648595/541NV10/2

The Matter Appealed Against: 2010 Rating List

Date of Hearing: 19 June 2019

Appearances: Mr D Cownie (agent for the occupier)
Mr C Holley (for the respondent Valuation Officer) (VO)

Date of Decision: 9 July 2019

Decision of Tribunal: Appeal allowed in part

Members of the Tribunal: Mr D Subacchi (Chairperson), Mr A Hinchliff & Mrs J Worswick

Tribunal Clerk: Mrs C Jones

Introduction:

1. The appeal under consideration followed a proposal made by CBRE Ltd. in respect of Retail Warehouse and Premises, Units 2-4, Deeside Retail Park, Chester Road East, Shotton, Deeside which the respondent Valuation Officer received on 3 April 2018. The proposal sought a reduction of the Rateable Value (RV) of the appeal property from £181,000 to £10 with effect from the 1 October 2010 on the grounds that –

We propose that the Rating List entry shown for the above property should be altered to £10 with effect from 01 October 2010. The alteration made by the Valuation Officer and notified by notice dated 22 March 2018 was inaccurate because the Rateable Value was incorrect, excessive and bad in law.

2. The Chairman of the Tribunal asked the agent to confirm if he was seeking a reduction to £10 RV with effect from the 1 October 2010. The agent affirmed that he was asking for a RV of £109,000 to be granted from this date.
3. The following 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.

Summary of the Appellant's Case

4. The agent told the Tribunal that the appeal hereditament was a large shop unit located on Deeside Retail Park in Queensferry. There were 4 units described as retail warehouse on the park which were the B&Q Warehouse (now occupied by The Range), Unit 1 (vacant formerly occupied by Poundworld), Pets at Home and the appeal hereditament. Additionally, there was a Pizza Hut restaurant and a Lidl Supermarket at the entrance of the site. The site was accessed off Evans Way from Chester Road East.
5. The agent explained that adjacent to the site to the north west was another retail warehouse operated by Charlie's Stores. Along with Pets at Home, the Charlie's unit had the best road frontage of all the units and had its own large private car park. Whilst it was not part of the Deeside Retail Park, one could easily be accessed from the other by foot as there was no fence or barrier between the two. Mr Cownie told the Tribunal that fashion retailers were notably absent on the park.
6. The prominence of the appeal hereditament was also highlighted. The layout of the site meant that the B&M unit lacked any significant visibility from Chester Road East, even at the entrance to the park at the junction with Evans Way. This was due to being obstructed by Pets at Home, Unit 1 and Pizza Hut. The agent produced photographs in his evidence pack to support this contention.
7. The units on Deeside Retail Park and Charlies Stores were all constructed of steel portal frames with profiled metal cladding above brickwork walls. The floor area for unit 2-4 in the rating list was 1809sqm. The design of Unit 1 and 2-4 was particularly basic, not dissimilar to standard warehouses. The new B&Q unit and their former unit, now occupied by Charlies were slightly more architecturally sophisticated, having single storey extended area to provide covered entrance area where trolleys can be picked up by customers.
8. Mr Cownie stated the subject property was rented by the ratepayer under the terms of a 15-year lease from July 2010. The rent review pattern was every 5 years. The review clause in the lease provided that, on the 5th and 10th years it would be higher than that which proceeded it or the one based upon the increase in the RPI index measured from the base date in July 2010. The rent review clause meant that the rent will increase by inflation on the 5th and 10th anniversaries of the lease commencement.
9. The agent quoted the case of Robinson Bros (Brewers) Ltd v Houghton and Chester-le-Street Assessment Committee as a useful summary of what a valuer should be seeking to arrive at in valuing a property. In his judgement Scott LJ had said that the value arrived at should represent: *'the figure at which the hypothetical landlord and tenant would.... Come to terms as a result of bargaining for that hereditament, in the light of competition or its absence in both demand and supply, as a result of "the higgling of the market"'. This emphasised the need to ensure that a valuation property reflects the relative strengths and weaknesses of the hypothetical landlord and tenants, given their assumed willingness to reach agreement. It is of course particularly important to*

bear this rule in mind when valuing a hereditament by means of methods which do not derive from rents agreed in the open market.

10. Mr Cownie quoted authorities regarding the weighting of evidence, contending the dispute turned on the relative weight of different classes of evidence, the analytical starting point was the decision of the Lands Tribunal in *Lotus and Delta Ltd v Culverwell (VO)* [1976]. The essence of the Lotus and Delta approach was described by the Upper Tribunal in *Lamb (VO) v Go Outdoors Ltd* [2015].
11. The agent contended that in terms of valuation the subject unit was situated in the least prominent position on the park. Owing to its poor position and the number of units surrounding it, it was also very difficult to see from the main road. The unit was available to let through the peak of the retail market (from 2005 to 2007), and yet it did not let until July 2010. At the AVD the material date, the only occupiers on the park were: a large DIY store, a discount supermarket (Lidl), a Pizza Restaurant, Unit 1 (whole) and units 2-4 were vacant. Adjacent to the site, 'Charlies' sells DIY and home and garden goods, obviously overlapping with B&Q's offer. The unit was finally let in 2010 when it could perhaps be assumed that the rental value was affected by the global downturn caused by the credit crunch in late 2007.
12. Mr Cownie produced a table of the analysis of the rental evidence derived from the park.

Address	Size	RV	RV £psm	Rent	Rent Date	Incentive	CBRE Analysis	Comment
B&Q Warehouse, Chester Road East, Shotton, Deeside	5,360sqm ITMS Or total (inc garden centre) 7865.85sqm	£485,000	£90	£641,187 pa, FRI lease	20 years from 4 July 05 2010 rent not increased on review	20 months' rent free & capital contribution to B&Q	Not analysed as full incentive package not known	Purpose built for B&Q Now occupied by The Range following B&Q's decision to assign the lease & close the store in March 2016
Units 2-4, Deeside Retail Park, Chester Road East	1,809sqm	£181,000	£100	£93,055pa	15 years from 19 Aug 10	14 months' rent free	£45.15psm	Arm's length open market transaction vacant & to let since 2005
Pets At Home, Deeside Retail Park	545.26sqm	£83,500	£150	£75,000pa	15 years from 26 March 12 Breaks at 5 th & 10 th	12 months' rent free	£113.84psm	Nil increase in 2017
Unit 1 Deeside Retail Park Poundland	404.06sqm	£66,500	£150	£54,000pa	10 years from 2 Nov 15	12 months' rent free	£110.60psm	Poundworld went into liquidation in June 2018
Charlies Stores, Chester Road East	4011.5sqm ITMS Actual area with outdoor display is 4,836.49sqm	£280,000	£70	24/6/87 at £318,860 pa then reviewed to £411,050pa from 24/6/02	35 years from 24 June 87 FRI 5 yearly reviews	Details unclear	2002 rent devalues to £100psm ITMS	Sub-let to Charlies in 09 nil increase ever since

13. The agent stated that the VO considered the tone to be established. He contended that it was evident from his table of rents above that it was doubtful a tone could truly have been established. In his opinion the evidential value of an established tone was that it represented an accumulation, over time, of a body of values either agreed, settled or determined in reliance on relevant rental evidence.
14. Mr Cownie explained that the rents on the park were all remote from the AVD, with the rent on Units 2-4 being the closest to 1 April 2008. He stated that it seemed that none of the agents who agreed or withdrew their appeals were aware of the full rental evidence of the rent passing on unit 2-4.
15. The agent submitted the following valuation for the appeal property, valuing it by adjusting the B&M analysed rent.

Valuation

July 2010 Rent as analysed	£45.15psm	
Adjust back to the AVD by dividing by 0.75		
£45.15 / 0.75	= £60.20psm	
Apply to floor area	1809sqm x £60.20pms =	£108,901
Add Plant		£ 435
	Total	£109,336
	Say	<u>£109,000</u>

16. In conclusion of his evidence Mr Cownie said that the evidence from the subject property was at the top of the hierarchy of evidence as set out in Lotus & Delta, requiring one significant adjustment. The evidence crucially reflected the valuation impact of the size and the poor location. The evidence of other agreements was not based on superior rental evidence, but those agreements fairly represent the advantage of those specific units. The evidence of other agreements when compared to the rents does produce a reliable indication of post AVD rental charge of c25% which he had adopted in his adjustment.
17. Mr Cownie explained that whilst the rent does not fit into the normal expected pattern of quantum, it is not required to do so, it was simply evidence that the normal pattern does not apply and that the difference in value was greatly affected by lack of prominence.
18. It was clear that the landlord of unit 2-4 recognised that the unit was inherently weak and of permanently low value relative to the other units, by agreeing a 15-year lease with a rent review clause that limited rent increases by reference to inflation only. Had the rent been just temporarily low to reflect conditions in July 2010, the review clause would have been open market rental value to allow the landlord to capture the kind growth in value that the VO suggested was appropriate.
19. The agent asked the Tribunal to give a decision at rateable value £109,000 with effect from the 1 October 2010.

Summary of the VO's Case

20. Mr Holley introduced himself and stated his qualifications and experience. He informed the Tribunal that as this was a 2010 list appeal, settlements had been agreed which supported the tone adopted.
21. Mr Holley explained that Charlies Stores was a much older unit than the appeal property, built in 1988 measuring 4011.50sqm with a tone of £70.00psqm. In contrast the appeal property was built in 2005, to a much better modern standard. The appeal property measured 1808.95sqm and therefore was 2.5 times smaller with a current tone of £100.00. Unit 1 measured 404.06sqm with a tone of £150.00psqm and was withdrawn by the previous agent. Pets at Home measured 545.26sqm with a tone of £150.00 which was agreed with the agent G L Hearn. The Range (formerly B&Q) measured 5357.43sqm was agreed with the agent G L Hearn at £90.00psqm.
22. He stated that in view of the settlements already agreed (as shown below) for the 2010 list, it was his contention that the tone adopted of £100psqm was correct.

Property	Year built	Size	Tone	Remarks
Charlies Stores	1988	4011.50sqm	£70.00	Much older unit
The Range	2005	5357.43sqm	£90.00	Tone agreed with agent
Unit 2-4	2005	1808.95sqm	£100.00	Tone reduce on VOR from £125.00
Pets at Home	2005	545.26sqm	£150.00	Tone agreed with agent
Unit 1	2005	404.07sqm	£150.00	Withdrawn by agent

23. The VO stated that bearing in mind the above settlements, he could not see how the appeal property would be valued any less than Charlies Store which was a much older build and considerably larger valuing at £70.00psqm. The agent was requesting an adopted value of £60.00psqm.
24. Mr Holley explained the agent had accepted that *"the above units were superior to the extent they were more visible from the road"*, but in his opinion they were clearly all set back equidistant from the main road and next door to each other. He submitted photographic evidence to substantiate this contention and stated that Charlies Store was slightly lower in height but benefitted from direct access from the main through road.

25. The VO included the following valuation for the appeal property: -

COMPONENT PARTS OF THE PROPERTY					
Ref	Floor	Description	Area m ² /unit	£ per m ² /unit	Value (£)
1.1	Ground	Ground Floor Sales	1772.38	100.00	177,238
1.2	Ground	Mess/Staff Room	7.12	100.00	712
1.3	Ground	Staff Toilets	12.13	100.00	1,213
1.4	Ground	Office	17.32	100.00	1,732
ADDITIONAL FEATURES OF THE PROPERTY INCLUDED IN THE VALUATION					
		Plant & Machinery			435
valuation sub-total					181,330

26. In summing up his evidence, Mr Holley stated that based on the evidence he had produced and the agreements already in place he believed a tone of £100 was correct. He therefore asked the Tribunal to dismiss the appeal.

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

Reasons for Decision

28. Having considered all the evidence placed before it, the Tribunal decided to allow the appeal in part. In arriving at its decision, it gave the following reasons.

29. It was aware that in accordance with the basis of valuation as contained in Schedule 6 of the Local Government Finance Act 1988, as amended by Section 1(2) of the Rating (Valuation) Act 1999, it must assume that the subject property is “vacant and to let”; in a reasonable state of repair and cannot have regard to the actual trade of the occupier.

30. Statute further requires that the appeal hereditament must be valued by reference to rental values being achieved as at 1 April 2008, whilst having regard to the physical state and its physical settings as at the Material Day (1 April 2010).

31. In his evidence the agent was contending that the “hierarchy” of valuation evidence established in *Lotus and Detla Ltd v Culverwell (VO)* 1976 should be followed in weighting the evidence. On the other hand, the Valuation Officer believed we should stand back from all of that and focus on the ‘tone’ established for Deeside Retail Park. This was established through the settlements on the other units, and a figure pm² derived from that.

32. The Tribunal attached little weight to the passing rents on the comparable properties submitted by the Valuation Officer because they transpired too remote from the AVD to be of any meaningful value.

33. Whilst the Tribunal accepted that a tone of list had become established on Deeside Retail Park, it did not believe that the appeal hereditament’s poor position had been sufficiently reflected in the Valuation Officer’s Notice. By the

same token, the Tribunal was not persuaded by the agent's contention for a reduction in the underlying level of value to £60/m².

34. Furthermore, the Tribunal disagreed with the Valuation Officer's opinion that Deeside Retail Park was solely a destination complex.
35. The Tribunal was bound by the aforementioned legislation and the Regulations governing the approach to determining the Rateable Value of Non-Domestic property within the 2010 Rating List.
36. The Tribunal was of the opinion that the Valuation Officer's Notice to reduce the underlying level of value from £125 to £100 per square metre demonstrated that the Rating List entry was excessive. However, the Tribunal considered that an underlying level of value of £90.00/m² more fairly reflected the features of a rental bid. The Tribunal's valuation is set out as follows: -

COMPONENT PARTS OF THE PROPERTY

RefFloor	Description		Area m²/unit	£ per m²/unit	Value (£)
1.1	Ground	Ground Floor Sales	1772.38	90.00	159514.2
1.2	Ground	Mess/Staff Room	7.12	90.00	640.8
1.3	Ground	Staff Toilets	12.13	90.00	1091.7
1.4	Ground	Office	17.32	90.00	1558.8

ADDITIONAL FEATURES OF THE PROPERTY INCLUDED IN THE VALUATION

Plant & Machinery	435
Valuation sub-total	163,241
Say	<u>£163,000</u>

37. Accordingly, the Tribunal orders the Valuation Officer to amend the rating list in accordance with its decision.

Certified a true copy on 9 July 2019.