

LANARKSHIRE VALUATION APPEAL PANEL

STATEMENT OF REASONS RELATIVE TO
APPEAL

in respect of

MATALAN RETAIL LTD

Caledonian Retail Park, 337 Glasgow Road, Wishaw

Introduction

This was an appeal arising out of the 2010 Revaluation.

The appeal subjects are a retail warehouse on Caledonian Retail Park, Wishaw.

They fell to be valued on the comparative principle. There was no dispute between the parties that the basic rate/ m² for Caledonian Retail Park is £180/ m² for standard units. The principal disagreement between the parties related to the rate per square meter to be applied to the agreed floor area of the appeal subjects and the Assessor's valuation approach which, although the premises were valued as a single entry, appeared to assume that the premises were two physically distinct properties. The Assessor contended for an overall rate of £125/m² for Units 5-7, and £180/ m² for Unit 8. With an addition for fit out, this gave a proposed rateable value of £625,000. The Appellants contended for a figure of £117m² for the appeal subjects. With an addition for fit out, this gave a proposed rateable value of £532,000.

Relevant Law

In considering its approach to the matter, the Committee had regard particularly to:-

- the commentary contained in *Armour on Valuation for Rating* (5th Edition) ("Armour"), paragraphs 5-25 to 5-26 inclusive and to the cases referred to therein. These included *Dryburgh & Co v Assessor for Strathclyde Region* 1982 SLT 426 and particularly the judgement of Lord Avonside and also *Buckhill Leisure Ltd v Assessor for Central Region*, March 31 1995, unreported, and *Dunfermline Corporation v Assessor for Fife* 1962 SC321. An Appellant must initially show that there was a case to try. Once that had been done, there was no presumption in favour of the Assessor's proposed valuation. Where a reasonable challenge to the Assessor's valuation had been made, the Committee should not proceed on the assumption that the Assessor's valuations were correct unless the Appellants proved otherwise. The Assessor in these circumstances required to explain his approach to the Committee.

- the commentary contained in Armour, paragraphs 2-05 to 2-06 and to the cases and legislation referred to therein: the process of revaluation involved a completely fresh start.
- the commentary contained in Armour, paragraphs 19-01 to 19-37 inclusive and to the cases and legislation referred to therein including the statutory definition of net annual value contained in Section 6(8) of the Valuation and Rating (Scotland) Act 1956; the best method of arriving at an estimate of annual value will be by a study of actual rents passing both in respect of the subjects being valued and subjects comparable with them in size, character and location (Armour, paragraph 19-02). Similarity in every respect is however not an essential pre-requisite for the application of the comparative principle. It is usually sufficient if the subjects are of the same category or genus (Armour, paragraph 19-21).
- the commentary contained in Armour, paragraphs 19-01 to 19-12 and to the cases and legislation referred to therein: since 1956, the rent passing for the appeal subjects themselves is not conclusive or determinative of the annual value of the subjects. Evidence of such a rent was simply an adminicle of relevant evidence (Armour paragraph 19-07).
- the commentary contained in Armour, paragraphs 18-02 to 18-12 and to the cases and legislation referred to therein: subjects are to be valued in their actual state.

Background

The initial Matalan unit was a double unit, however this now occupies four units. The last unit incorporated into the appeal subjects was Unit 8 in 2003. The parties could not recall what approach to valuation had been taken when the third unit had been added.

The parties were in agreement that when a landlord is letting a property, quantum may be reflected in the rent he negotiates dependent on size. This can be reflected in a quantum allowance or in an overall or end rate. The Assessor's approach equated to the application of an end rate of £137.50 / m² to the whole appeal subjects, and the Appellant's approach to an end rate of £117 / m² which would equate to quantum of 35% deducted from the rate of £180 / m².

Assessor's approach

The Assessor argued that given the level of occupation and success of the Caledonian Retail Park, the landlord would be unlikely to let Unit 8 to Matalan for an amount less than he could get on the open market. This was reflected in the rental agreement within the lease. The rent review clause stated that the rent was to be the open market rent achieved by the higher of the let as one entity or the sum of the two parts. The rent agreed when the rent had been reviewed in 2008 had been based on the sum of two parts.

Appellants' approach

The Appellants argued that in adopting this approach, the Assessor considered that the actual rent of the subjects is the best guide for the valuation of the subjects, whereas the actual rent was not a reliable guide to the valuation of the subjects, being influenced by the artificial valuation criteria set out in the lease.

Decision and reasons

The Committee preferred the approach taken by the Appellants.

The appeal subjects fell to be valued in their actual state. Three units had been opened up so as to form four, but the rent had been ascertained on review by looking at units 5, 6 and 7, and then looking at unit 8. This had been done because of the peculiar provision of the rent review clause within the Lease, but it was accepted that there was only one unit and one ratepayer, and in the Committee's view the premises fell to be valued on the comparative principle as a single retail warehouse.

It is well settled that the actual rent passing under a lease is not now conclusive or determinative of the annual value of the subject. Although such a rent may be an adminicle of relevant evidence in deciding the question, it cannot properly be the sole basis and starting point. As to the weight to be given to the actual rent in the present case, the rent review provision was highly unusual. This had been entered into in 2003. The contractual arrangement had been drawn up when the landlord was in a strong position. The unit adjoining had become vacant, trading conditions were good, and there was an appreciation by the landlord that he could hold out for a good contractual arrangement. For this reason the rent review clause was drawn in the form in which it was allowing for the higher of the two alternative bases set out in the clause. Clause 3.2(vi) contained a very specific assumption. The rental for the appeal subjects was not determinative of rental value and did not equate to the open market rent. It had been negotiated five years before the tone date, with a special purchaser in ebullient trading conditions. It was wrong to rely on the rent, which was the fall back position adopted by the Assessor.

The Appellants in their production 2 had shown their proposed valuation on two alternative bases. Either the rate per square metre of £180 for standard units, which was not disputed, could be adopted and then a quantum allowance applied to that figure; or alternatively, an overall rate applied derived from comparable properties.

The Committee agreed with the Appellants that the Homebase premises also situated on the Caledonian Retail Park, Wishaw would be considered extremely relevant evidence when preparing an open market rent valuation of the appeal subjects. It is a rent of a large retail warehouse in the same catchment area and in the same age and specification of property.

The Committee took into account the Appellants' evidence that Homebase are a large store occupier and their rent was influenced by stores of between 3,250 sq m and 3,558 sq m (which were used as comparables by the Independent Expert who determined the rent on review).

The Committee also took into account the Appellants' evidence that in the retail warehouse sector, historically there have been common size bands where varying degrees of demand has been exhibited, one of these being a relatively broad size range from 2,300 sq m to 4,650 sq m.

The Committee agreed that demand was a factor in deciding the allowance to be made for quantum, but it did not accept the Appellants' analysis of demand. Whilst the subjects fell to be valued in their actual state, the Committee in assessing demand were entitled to have regard to the fact that Caledonian Retail Park whilst not, as the Appellants put it, a "destination" retail park, had maintained full occupancy since 2005 with high profile retailers, and felt that an additional allowance for quantum beyond that given for Homebase was not justified. The Committee also had regard to the levels of quantum applied in other retail parks as set out in the Assessor's Production 5 and agreed with the Assessor's submission that there was no automatic entitlement to quantum. It had to be justified by local evidence. This was clear from SAA Practice Note 6 and from Armour – para. 19.26. The key issue was to analyse what the market was doing. The retail park was successful. Where there was a high demand for units then the case for quantum was less. The Appellants were seeking a quantum allowance of 35% for the appeal subjects. Quantum did not increase mechanically proportionately in relation to size. Quantum of 30% was the highest given in the retail park. In other retail parks, according to the Assessor's production 5, the rates allowed were 10 to 27.5%. Quantum of 35% was unprecedented. In Cumbernauld the rate was 10% only. The Appellants' witness Mr Wilson had said this was well positioned and in a good location. The rateable value rate was £140 per square metre and the rate with a quantum allowance was £126 per square metre. There was no justification for a quantum allowance of 35%. Having regard to Homebase, the allowance should be no higher than 30%.

The Committee accordingly preferred the approach taken by the Appellants to the valuation of the appeal subjects and granted the appeal to the extent of adopting the Appellants' approach in preference to that of the Assessor but for the foregoing reasons restricted to 30% the level of quantum to be applied to the basic rate of £180 /m² as the Assessor had put forward in his alternative submission.

In reaching its decision, the Committee also took into consideration the comparisons put forward by the Appellants but took the view that given the availability of a suitable comparison on the same site this provided a more relevant comparison.

7 June 2012