LANDS VALUATION APPEAL COURT, COURT OF SESSION

[2018] CSIH 13
XA89/17

Lord Justice Clerk
Lord Malcolm
Lord Doherty

OPINION OF LADY DORRIAN, the LORD JUSTICE CLERK

in the Appeal

by

ASSESSOR FOR GRAMPIAN

Appellant

against

CDS (SUPERSTORES INTERNATIONAL) LIMITED TRADING AS THE RANGE

Respondent

Appellant: Gill; Solicitor to Glasgow City Council
Respondent: O'Rourke QC, Garrity; Anderson Strathern LLP

27 February 2018

[1] For the reasons given by Lord Doherty, I agree that this appeal should be allowed in relation only to the end allowance and the adjustment for fit-out, sprinklers and air conditioning. The sum which should as a result be reflected in the 2010 valuation roll, with effect from 28 November 2014, is £602,000. *Quoad ultra* the appeal should be refused. I have nothing further to add.

LANDS VALUATION APPEAL COURT, COURT OF SESSION

[2018] CSIH 13
XA89/17

Lord Justice Clerk
Lord Malcolm
Lord Doherty

OPINION OF LORD MALCOLM

in the Appeal

by

ASSESSOR FOR GRAMPIAN

Appellant

against

CDS (SUPERSTORES INTERNATIONAL) LIMITED TRADING AS THE RANGE

Respondent

Appellant: Gill; Solicitor to Glasgow City Council
Respondent: O'Rourke QC, Garrity; Anderson Strathern LLP

27 February 2018

[2] For the reasons given by Lord Doherty, I agree that this appeal should be allowed in relation only to the end allowance and the adjustment for fit-out, sprinklers and air conditioning.

LANDS VALUATION APPEAL COURT, COURT OF SESSION

[2018] CSIH 13
XA89/17

Lord Justice Clerk
Lord Malcolm
Lord Doherty

OPINION OF LORD DOHERTY

in the Appeal

by

ASSESSOR FOR GRAMPIAN

Appellant

against

CDS (SUPERSTORES INTERNATIONAL) LIMITED TRADING AS THE RANGE

Respondent

Appellant: Gill; Solicitor to Glasgow City Council
Respondent: O'Rourke QC, Garrity; Anderson Strathern LLP

27 February 2018

Introduction

[3] This is an appeal by the appellant ("the assessor") from a decision of the City of Aberdeen valuation appeal committee. The committee allowed an appeal by the respondent ("the ratepayer") against the NAV/RV of £725,000 which the assessor had entered in the valuation roll for retail subjects at Unit 8-9, Queen's Link Leisure Park. The committee decided that the NAV/RV should be £533,970.

[4] The first issue in the appeal to this court is whether the committee were entitled to decide that the appeal subjects are a retail warehouse rather than a depot ("big box") warehouse. If in fact the subjects are a big box, it is common ground that the NAV/RV of £725,000 is correct. In the event that the committee were right to conclude that the subjects were not a big box, the second and third issues are whether they erred in applying a quantum allowance of 47.5% and an end allowance of 10%.

The Facts

[5] The appeal subjects are Unit 8-9, Queen's Link Leisure Park, Aberdeen. At the 2010 revaluation Units 8 and 9 comprised two separate entries in the valuation roll (a nightclub and a bingo hall). In October 2013 the landlord obtained planning permission to combine the units and change their use from "Assembly and Leisure "to "Non-Food Retail". The subjects came into existence as a retail warehouse on 28 November 2014 following reconstruction work. They have a gross internal area ("GIA") of 5688.8m^2. The assessor entered them in the valuation roll with effect from that date. Since the entry was a new entry made while the valuation roll was in force, the value to be ascribed to the subjects was not to exceed the tone of the roll (Local Government (Scotland) Act 1966, s 15).

[6] The Scottish Assessors Association ("SAA") published several practice notes for the 2010 revaluation.

[7] SAA Practice Note 6 "Valuation of Retail Warehouses" ("PN6") provides that it applies to retail warehouses up to 8,000m^2 (para 1.1). The basis of valuation is the comparative principle using rates per m^2 derived from local rental evidence (para 2.1). Paragraph 4.0 provides that the basic specification is a shell unit. Paragraph 4.0 concludes:

> "The basic unit is usually in the order of 950m^2, but most modern retail parks have a range of unit sizes. Commonly there is a double sized unit around 1,800-1,900m^2 plus one or two in the 2,500 – 3,500m^2 range."

Paragraph 5.2 sets out additions to be made to the basic rate for fit out, air conditioning and sprinklers. Paragraph 7.0 provides:

> "7.0 Quantum
>
> 7.1 An allowance under this heading may be granted when supported by local evidence."

[8] SAA Practice Note 6A "Valuation of Depot Warehouses" ("PN6A") provides:

> "**1.0 Introduction**
>
> 1.1 This Practice Note applies to Depot Warehouses, which are large retail warehouses ranging in size from 8,000m^2 to 15,000m^2. These subjects may be situated either adjacent to a retail park or in a standalone situation catering for a relatively large catchment area. Due to their size and characteristics, Depot Warehouses have a distinctly different market to that of retail warehouses and should be valued by reference to the level of rents prevailing for this type of subject and not by comparison with standard retail warehouses.
>
> …
>
> **2.0 Basis of Valuation**
>
> 2.1 Depot Warehouses are valued on the Comparative Principle using rates per m^2 derived from rentals of units of a similar size, character and location. Where local evidence is not available, comparison should be made with depot warehouses in other areas…."

In terms of para 4.1 the basic unit is taken to be a shell unit, and para 5.2 makes provision for additions to the basic rate for fit out, air conditioning and sprinklers.

[9] Queen's Link Leisure Park ("Queen's Link") is located near the beach in Aberdeen, between Links Road and the Esplanade. There are eight other units in Queen's Link, mainly devoted to leisure uses, and there is a large common car park with 876 spaces.

[10] Beach Boulevard Retail Park ("Beach Boulevard") is adjacent to Queen's Link on the other side of Links Road. It contains retail units ranging in size from 559.4m^2 to 2049.8m^2

GIA. There is a large common car park. The assessor valued the units in accordance with Practice Note 6. The established tone of the roll basic rate for the subjects in Beach Boulevard is £175 per m^2. Most of the units there are single units. The three larger (double sized) units (two of 1908.4m^2 and one of 2049.8m^2) were given quantum allowances of 20%.

[11] The largest retail warehouse in Aberdeen is B&Q at Garthdee Road ("B&Q"). Those subjects have a GIA of 8680.91m^2. They have an exclusive car park with 480 spaces. At the 2010 revaluation they were valued in accordance with Practice Note 6A as a big box warehouse by comparison with other big box warehouses. The basic rate applied before allowance was made for fitting out etc. was £137 per m^2.

[12] There is also a small retail warehouse park in Garthdee Road on a separate site from B&Q. It contains only two units, each having a GIA of just under 1000m^2. One is occupied by Currys and the other by Boots. The tone of the roll basic rate for those units is £315 per m^2.

The ratepayer's valuation approach

[13] Before the committee the ratepayer was represented by a surveyor, Mr Hart FRICS, who acted both as advocate and expert witness. Mr Hart maintained that the appeal subjects ought to be valued as a retail warehouse rather than as a depot or "big box" warehouse. In his opinion they were more comparable with the Beach Boulevard units than with B&Q, but he argued that the tone basic rate of £175 should be reduced by 56.5% to reflect quantum. He arrived at that conclusion by comparing the size and basic rate of Currys at Garthdee with the size and basic rate of B&Q. The rate after quantum of £76 per m^2 was lower than the rate of £86 per m^2 derived from the rent of one of the larger Beach

Boulevard subjects occupied by Dunelm, but that was to be expected because the appeal subjects were a much bigger unit than the Dunelm unit.

The assessor's valuation approach

[14] The assessor also acted as an advocate and gave evidence as an expert witness, but his main valuation witness was one of his principal valuers, Mr Fordyce MRICS.
Mr Fordyce maintained that the appeal subjects were a big box warehouse and that they had been correctly valued by him using PN6A. The appropriate comparison was with B&Q. It was recognised that B&Q was in a better locality for a big box and that it had a dedicated car park. Each of those factors justified a reduction of 5% from the £137 basic rate which had been applied at B&Q. The application of that 10% end allowance reduced the basic rate to £123, which Mr Fordyce rounded down to £120. Additions to the rate to reflect fitting out, sprinklers and air conditioning resulted in an NAV/RV of £725,000. Mr Fordyce also carried out a check valuation, valuing the subjects as a standard retail warehouse by comparison with the Beach Boulevard subjects. On that approach the appropriate quantum allowance was 30%. That was the highest quantum allowance he was aware of having been applied to any retail warehouse in Scotland. Once appropriate allowance was made for fitting out, sprinklers and air conditioning the check valuation resulted in an NAV/RV of £750,000, which was higher than the value the assessor had entered in the roll.

The committee's interim and final decisions

[15] The committee followed the unusual course of issuing an interim decision. They decided that the subjects were a large standard retail warehouse, but were not a big box. In their view the appropriate comparison was with the Beach Boulevard subjects, and the correct basic rate was £175. They regarded the Dunelm rent as of no assistance because it

was below the tone of the roll. They prepared a graph. One axis of the graph denoted quantum and the other axis denoted GIA. They plotted a curve between the position on the graph of the single units at Beach Boulevard and Garthdee (zero % quantum), the double sized units at Beach Boulevard (20% quantum), and B&Q (56.5% "quantum"). They used that curve to ascribe quantum of 47.5% to the appeal subjects. They also applied the 10% end allowance Mr Fordyce had used in his primary valuation. They invited further written submissions from the parties as to the correct NAV/RV in light of the interim decision.

[16] Both parties made further written submissions. The assessor repeated his earlier submission that the subjects were a big box and ought to be valued as such by comparison with B&Q. In the event that they were valued as a standard retail warehouse, he submitted that the committee's approach to quantum was wrong in principle. Comparing a single unit retail warehouse at Garthdee with the big box B&Q was not comparing like with like. There was no proper correlation between them. They were different subjects in different markets and were valued on different bases. He submitted that that error was compounded by applying the 10% end allowance which was only appropriate if the subjects were valued as a big box by comparison with B&Q.

[17] In their final decision the committee adhered substantially to the approach taken in the interim decision. After making allowance for fit-out, sprinklers and air conditioning, they arrived at an NAV/RV of £533,970.

The appeal

[18] The parties agree that the committee made a mistake when adjusting the valuation for fit-out, sprinklers and air conditioning. The committee accepted their mistake (in supplementary reasons which were added to their statement of reasons when they prepared

the stated case). They had intended to follow the assessor's approach on those aspects of the valuation, but they had not properly applied it. They indicated that had they done so the NAV/RV would have been £549,741 rather than £533,970.

[19] Counsel for the assessor submitted that the committee had erred in three further respects. First, they had erred in categorising the subjects as an ordinary retail warehouse rather than a big box. On the evidence no reasonable committee could have come to that conclusion. An assessor was not obliged to follow a Practice Note: see e.g. *Rolls-Royce plc and others* v *Assessor for Renfrewshire Valuation Joint Board* 2013 SC 131, per Lord President Gill at para 2, and per Lord Hodge at para 32. Second, in the event that the committee had been entitled to categorise the subjects in the way they did, the approach they had taken to quantum was misconceived. They had wrongly assumed that a quantum correlation could be derived from comparison of the basic rates of the small Garthdee units and B&Q; and that that correlation would provide reliable guidance as to the appropriate quantum correlation between the appeal subjects and the single units at Beach Boulevard. The exercise was misguided because B&Q and the single unit subjects at Garthdee were in different categories, and their values had been arrived at using different comparative material. Reference was made to *Armour, Valuation for Rating* (5th ed.) para 19-26; *B&Q plc* v *Renfrewshire Valuation Joint Board Assessor* [2004] RA 220 at p 232 and pp 238-9; and *B&Q plc* v *Assessor for Dunbartonshire Valuation Joint Board* 2007 SC 135, at para 15. The huge quantum allowance of 56.5% produced by the B&Q/Currys exercise in itself suggested the lack of any real correlation between their values. On the evidence adduced no reasonable committee could have assessed quantum at 47.5%. Third, the committee had erred in applying the end allowance of 10%. On the evidence that allowance was only appropriate if the subjects were valued as a big box by comparison with B&Q. The end allowance reflected two particular

advantages which B&Q enjoyed which neither the appeal subjects nor Beach Boulevard enjoyed. There was no basis for it if the subjects were valued as an ordinary retail warehouse by comparison with Beach Boulevard.

[20] In response senior counsel for the ratepayer submitted that on the evidence it had been open to the committee to decide that the subjects were not a big box warehouse. Their size was within the range described in PN6 and was below the range discussed in PN6A. The appropriate classification of the subjects had been a matter of fact for the committee. So far as the quantum allowance was concerned, given the lack of direct evidence as to quantum for large subjects the committee had been entitled to draw such assistance as they could from the evidence which was available. That was what they had done. They had not erred in law or acted contrary to any fundamental valuation principle. Finally, the committee had had evidence before them entitling them to apply the end allowance which they had. While it was true that comparison had been with Beach Boulevard rather than B&Q, the two 5% allowances applied by the assessor could still be justified because B&Q had been part of the evidence relied upon to establish the quantum allowance.

Decision and reasons

Classification

[21] Recommendations in SAA Practice Notes are not binding on individual assessors, but they are often followed and they have the merit of providing a degree of consistency to valuations across Scotland: *Armour, supra,* para 1-8; *cf Rolls-Royce plc and others* v *Assessor for Renfrewshire Valuation Joint Board, supra,* per Lord President Gill at para 2, and per Lord Hodge at para 32. At the revaluation the assessor followed the guidance in PN6 when valuing retail warehouses, and he followed the guidance in PN6A when valuing B&Q.

There is no doubt that, *prima facie*, the guidance in PN6 and PN6A suggests that the appeal subjects fall within the ambit of PN6 rather than PN6A. Mr Fordyce took a different view. He thought that their size (albeit less than 8,000m^2) and other characteristics made them a big box, and that they were more comparable with B&Q than with standard retail warehouses. Mr Hart disagreed. In his view, having regard to their size and other factors, they were not a big box and they were more comparable with standard retail warehouses. Accordingly, the committee had before them competing expert testimony on a question which was essentially a matter of valuation judgement. Unless the basis of either witness's evidence was flawed because of an error of law or a fundamental error of valuation principle, it was open to the committee to decide which evidence they accepted. It was not suggested that either witness's evidence on this point was vulnerable to such attack. The appropriate classification of the subjects and the identification of suitable comparisons were pre-eminently matters of fact for the committee. In my opinion, on the evidence before them they were entitled to decide that the subjects were not a big box.

Quantum

[22] The committee's assessment of the appropriate quantum allowance is less straightforward. On any view, a quantum allowance of 47.5% is extraordinarily large. However, ultimately I am not persuaded that no reasonable committee could have arrived at that allowance on the evidence before them.

[23] The very real difficulty which the committee faced was that they had no relevant evidence of rents or values for standard retail warehouses which were larger than about 2,000m^2. It was in those circumstances that Mr Hart and Mr Fordyce made valuation judgements as to the appropriate quantum allowance for the appeal subjects. Mr Fordyce's judgement was that it should be 30%, and that he knew of no higher quantum allowance

having been granted to any retail warehouse in Scotland. Mr Hart's judgement was that it ought to be much higher, along the lines of the 56.5% differential between the basic rate of Currys and B&Q.

[24] I think it is clear that the committee did not accept Mr Fordyce's evidence that 30% was a sufficient allowance. They were persuaded that Mr Hart's Currys/B&Q exercise did provide some guidance as to the quantum differential between those subjects; and that quantum for the appeal subjects ought to be much nearer that differential than the 20% quantum which the double sized units received. They prepared the graph which they plotted to assist them in identifying 47.5% as the appropriate allowance.

[25] Had it been for me rather than the committee to assess the evidence, I may have given less weight to Mr Hart's exercise and I may have been less inclined to conclude that an allowance as high as 47.5% was justified in the circumstances. However, in the final analysis the assessment of quantum was a question of fact for the committee. I do not think that they acted irrationally in doing what they did. Notwithstanding the criticisms made of Mr Hart's Currys/B&Q exercise, I am not convinced that they were bound to give that evidence no weight. While it was less compelling than it would have been had those subjects been within the same genus and valued by reference to the same comparative body of evidence, it was not devoid of probative value. I think it significant that at the revaluation the actual rent for B&Q was very close to its NAV/RV. In those circumstances the B&Q basic rate could reasonably be taken as being in accord not just with comparable big box subjects but also with the B&Q rent. Comparison between the B&Q rate and the Currys rate could provide some indication of rental rates applying to subjects in the same location which had broadly similar uses, but very different sizes (*cf Textile World* v *Assessor for Strathclyde Region* 1995 SC 588; *Spudulike Group Ltd* v *Assessor for Tayside Valuation Joint Board* [2002] RA 91 at para 89).

In my opinion, once it is accepted, as I think it has to be, that the committee were entitled to give some weight to Mr Hart's Currys/B&Q exercise, it becomes impossible to maintain that it was not open to them to assess quantum at 47.5%.

End allowance

[26] I am satisfied that the committee erred in applying a 10% end allowance. In my opinion there was no proper evidential basis for them following that course. Their stated basis was Mr Fordyce's evidence. The problem with that is that Mr Fordyce supported an end allowance only if the subjects were valued as a big box by comparison with B&Q. It was in those circumstances, and those circumstances alone, that a 10% end allowance was justified to reflect the fact that, as compared with B&Q, the appeal subjects were less well located and did not have the advantage of their own car park. Neither Mr Fordyce nor Mr Hart maintained that an end allowance was appropriate if the subjects were valued as a standard retail warehouse. That was because the tone basic rate of £175 per m^2 for Beach Boulevard reflected the advantages and disadvantages of the location (including the fact that there was a shared car park).

The stated case

[27] In this appeal the form and content of the stated case were unsatisfactory. The submissions of the parties were set out at inordinate length. They extended to 21 pages. The intelligibility of the stated case suffered because the gist of each party's submissions was not clearly and succinctly summarised.

[28] By contrast, the findings in fact were brief, extending to just over a page. Contrary to the clear guidance given by the court in *Scammell* v *Assessor for Highland and Western Isles Valuation Joint Board* 1997 GWD 29-1495 (which guidance is reproduced in *Armour*, para 5-

48), several of the findings required reference to extraneous material in order to understand them. In a further unwelcome departure from normal practice, at the end of the case a series of questions for the court were posed.

[29] It may be helpful to remind committees of the customary form and content of a stated case in an appeal to the Lands Valuation Appeal Court from a decision of a committee. The case normally begins by narrating the date and place of the meeting of the committee and by setting out the entry (or entries) in the valuation roll which the ratepayer appealed against. That is usually followed by a sentence setting out what it was in the entry that the ratepayer sought should be changed (e.g. "The appellant craved that the assessor should have valued the subjects at £x NAV/RV."). The next paragraph should set out the representation for each party, and the witnesses which each led. The productions lodged by each party are then listed. Next come the findings in fact. After the findings in fact, the contentions for each party should be summarised. Each summary ought to be brief. It should outline the essence of the party's submissions and it should note any authorities which were referred to. It ought to be rare for the summary of a party's contentions to take up more than a page or two, and often less than a page is likely to suffice. After the contentions, the committee's decision, and then their reasons, are stated. Finally, the grounds of appeal to the court and the answers thereto are set out.

Disposal

[30] I propose to your Ladyship and your Lordship that the appeal be allowed, but only in so far as relating to the end allowance and the adjustment for fit-out, sprinklers and air conditioning. *Quoad ultra* the appeal should be refused. The parties are agreed that in those circumstances the arithmetical result would be an NAV/RV of £602,006. That should be

rounded down to £602,000. That figure should be substituted in the 2010 valuation roll with effect from 28 November 2014.