

**Appellant:** The Co-Operative and Poundland

**Appeal Address:** Shop and Premises, The Co-Operative Food, Berriew Road, Welshpool, SY21 7SN

**The Matter Appealed against:** Valuation Office Notice of Alteration

**Date of Hearings:** 6 February 2019 reconvened 2 October 2019

**Appearances:** Mr G Garnett of Colliers International (Appellant) and Mrs C M Jones representing the Valuation Officer (VO)

**Date of Decision:** 11 October 2019

**Decision of Tribunal:** Appeal Dismissed

**Members of the Tribunal:** Mr R J Higginson (Chair), Mr J R Pyrke and Mr R S Smith

**Tribunal Clerk:** Mr R Williams

**Introduction:**

1. The subject appeals arose from proposals submitted by Colliers International on behalf of Co-Operative and Poundland to the VO on the 30 March 2015 and 30 March 2017, challenging the VO Notice of Alteration dated the 16 July 2013 on the grounds that *“The alteration made by the VO by way of the notice dated the 16 July 2013 is unfair, incorrect, excessive and bad in law and should be reduced to £10 (IPP No.25448921) and £1 (IPP No.28957882). Effective Date: 29 November 2011.”*
2. The following is a summary of the case and was 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.

**Valuation Officer’s Case**

3. Having introduced herself to the Tribunal, Mrs Jones reported that the issue in dispute was the Rateable Value (RV) applied to the appeal hereditament with effect from 21 March 2011, the date that Tesco opened a new purpose build superstore in Welshpool. She confirmed that the appeal hereditament’s current RV was £95,500 based on a rate of £70/m<sup>2</sup>.
4. She provided an assessment and proposal history in respect of the appeal hereditament and explained that the assessment was originally identified

as Somerfield, Berriew Road, Welshpool, SY21 7SN, with a Compiled List entry in the 2010 Non-Domestic Rating List at £123,000 RV.

5. Colliers International submitted three proposals on behalf of the Co-Operative/Poundland against the original Somerfield assessment:
  - a. The Compiled list proposal (IPP No.17039941 dated 8 June 2010) against £123,000 RV was agreed at £115,000 RV.
  - b. The material change of circumstances (MCC) proposal (IPP No.18228170 dated 7 April 2011) against the roadworks in the town was agreed at £110,000 RV with effect from 15 October 2010 reflecting a 5% reduction for the roadworks.
  - c. A further MCC proposal (IPP No.18228558 dated 7 April 2011) against the opening of Tesco on 21 March 2011 was agreed at £95,500 RV, reflecting a reduction from £84.50/m<sup>2</sup> to £70/m<sup>2</sup> (17.16%).
6. As those proposals were all agreed against the old Somerfield address, the VO raised a report on 29 November 2011 against the new Co-Operative address and the assessment was reduced to £95,500 RV reflecting the agreement reached on IPP No.18228558.
7. As a consequence, Colliers International submitted two new proposals (IPP Nos.25448921 & 28957882 dated the 30 March 2015 and 30 March 2017 respectively) against the Notice; so, in effect, the appellant was challenging the agreement made in respect of IPP No.18228558 at £95,500 RV.
8. The VO referred to Paragraph 2(1) Schedule 6 of The Local Government Finance Act 1988, which provided the definition of RV of a non-domestic hereditament and the assumptions to be made. The effective and material dates in both appeals was 21 March 2011.
9. Accordingly, the physical circumstances of the hereditament and the locality as they stood at 21 March 2011 must be considered in relation to the economic circumstances that existed at 1 April 2008.
10. Mrs Jones referred to case law in respect of *Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council*, and *O'Brien v Harwood* which provided that at the end of a Valuation List *"rents will largely be subsumed into assessments and at that stage, surveyors will have little regard to rents and pay considerable attention to assessments."*
11. The VO reported that the appeal hereditament occupied a town centre position opposite Morrisons and had a large local authority car park to the rear. It was built approximately 1985 and had a total area of 1371.15m<sup>2</sup> over the ground and first floors.

12. According to *Lotus & Delta*, the starting point was to look at the rent passing on the property itself and that the more closely the circumstances under which the rent was agreed, both as to time, subject matter and conditions, relate to the statutory requirements, the more weight should be attached to it.
13. The VO confirmed there were two rents passing on the appeal hereditament, one from September 2007 and another from August 2015.
14. Mrs Jones commented that the rent passing in September 2007 was very close to the Antecedent Valuation Date (AVD) and therefore reflected market conditions and all issues associated with the subject property but not the opening of Tesco.
15. The later passing rent was from when Poundland occupied and was agreed for £1 from August 2015 to August 2016; £1 from August 2016 until August 2017 and then £31,000 from August 2017 until August 2018. Given that the AVD was 1 April 2008, she indicated that the rent agreed with Poundland was over seven years post AVD for the 2010 Rating List, over four years post the MCC and in fact, the rent was even post AVD for the 2017 Rating List.
16. Mrs Jones suggested that it was ill-considered to attach much weight to this rental evidence as it was too far removed from the AVD and even the MCC to be of any real use.
17. The Compiled List RV agreed with Colliers International at a figure of £115,000 was based on the rent from September 2007 of £110,700 plus a 5% uplift for fit out. The adjusted rent was £116,235, which analysed over 1371.15m<sup>2</sup> gave a value of £84.77/m<sup>2</sup>. It was agreed with the appellant at £84.50/m<sup>2</sup> resulting in £115,000 RV. No further proposals were submitted against the compiled list RV.
18. With effect from 15 October 2010 a reduction of 5% was agreed with Colliers International in line with other agreements reached within the town given in respect of shops located within Broad Street, Berriew Street, Church Street, Severn Street and Cumberland Place for roadworks in the town. No further proposals were submitted in respect of this issue.
19. Before the MCC of Tesco opening, the 5% allowance for the roadworks was removed and the RV of the appeal hereditament returned to £115,000. The passing rent on the subject property in September 2007 supported the £115,000 RV, as did the agreement reached with Colliers International for the compiled list appeal where the market and all advantages and disadvantages of the property were reflected. Therefore, the £115,000 RV should be the starting point at which the appeal assessment could be reduced to reflect the effect of Tesco opening.
20. Noting that *Lotus & Delta* provided that assessments of other comparable properties were relevant, Mrs Jones considered settlement evidence on

other assessments in Welshpool. *O'Brien v Harwood* discussed the three stages leading to the establishment of the tone of the list and provided that *"a stage is reached where enough assessments have been agreed or determined or are unchallenged to establish a pattern of values, a tone of the list. The list is then said to have settled. Rents will be largely subsumed into assessments. At that stage, rating surveyors will have little regard to rents and pay considerable attention to assessments"*.

21. Mrs Jones confirmed that general shops on Broad Street, Berriew Street, Church Street, Severn Street and Cumberland Place were given a 5% allowance for the changes in road layout along with the opening of Tesco. She added that in excess of fifty assessments were reduced by 5% as a result of Tesco opening, some of which were agreed with agents, including G L Hearn.
22. The Spar located at Church Street, valued as a convenience store, was given a 5% reduction for the opening of Tesco, agreed with Colliers International.
23. Sainsburys at Brook Street was agreed with GL Hearn at £69,500 RV and the property was given a reduction from £80/m<sup>2</sup> to £67.50/m<sup>2</sup> (15.63%) reflecting the opening of Tesco. The reduction was made following consideration of trade before and after Tesco opening.
24. Morrisons at Berriew Road had its RV reduced from £160/m<sup>2</sup> to £140/m<sup>2</sup> (12.5%) having regard to trade before and after Tesco opening. A proposal was made on the grounds of Tesco opening but was withdrawn by Gerald Eve and the reduction was actioned on a Notice. There was however an outstanding proposal against the Notice.
25. As previously mentioned, the RV on the subject assessment was reduced to £95,500 RV to reflect the opening of Tesco and agreed with Colliers International on IPP No.18228558. The appellant will however contest that the agreement reached in respect of this proposal was an "interim agreement" between the parties.
26. Mrs Jones had no evidence of any such agreement and confirmed that the e-mail received from the appellant with the agreement form makes no mention of an "interim agreement" to be revisited at a later stage, or of Colliers International desire for it to be non-binding. If there was an "interim agreement" Mrs Jones would have expected written confirmation from both parties at that time. She also emphasised that the VO does not have a policy of making any such type of agreement.
27. In conclusion, Mrs Jones reminded the Tribunal that the £115,000 RV was the value of the appeal hereditament before Tesco opened. Settlement evidence showed that standard shops were given a 5% reduction, Spar was given 5%; Sainsburys and Morrisons were given a 15.63% and 12.5% reduction respectively based on trade information. Following an agreement

reached with the appellant, the appeal hereditament was already given a reduction of 17.16%.

28. The VO submitted that before the MCC, the appeal hereditament was valued at £84.50/m<sup>2</sup> which was in line with the passing rent in September 2007. The current reduction for the opening of Tesco at £70/m<sup>2</sup> sits in line with other settlement evidence.
29. Accordingly, her proposed valuation was £95,500 RV based on 1371.15m<sup>2</sup> at £70/m<sup>2</sup>, a value which had already been agreed with Colliers International. In view of the evidence she had presented, she requested that the Tribunal confirm that the current assessment of £95,500 RV was correct and dismiss the subject appeals.
30. During cross examination, Mrs Jones responded as follows to questions from Mr Garnett:
31. The comparable properties in Broad Street and Berriew Road are small general shops.
32. Sainsburys has access to 2 roads and Morrisons to the A458. Both stores have car parks along with better access/egress in comparison to the appeal hereditament.
33. The RV in respect of Morrisons was reduced by 12.5% following consideration of trade before and after the opening of Tesco.
34. The Spar is a different occupier as a convenience store and therefore can trade outside normal hours.
35. The 2007 rent passing on the appeal hereditament does not reflect the opening of Tesco.

### **Agent's Case**

36. Having introduced himself to the Tribunal, Mr Garnett referred to a document prepared by Mr G Ryall, a highly respected colleague, regarding an "interim agreement" reached with Mr S Davies, an experienced valuer at the Valuation Office Agency, regarding the MCC. Both gentlemen have since retired.
37. The document noted that when determining the MCC on the present grounds it was usual to look at the impact on trade following the opening of the new supermarket. In the subject appeal this presented difficulty as following the opening of Tesco, the Co-Op ceased trading and closed.
38. Consequently, a reduction in assessment was agreed on the understanding, that should additional evidence come to light the assessment would be looked at again. In Mr Ryall's experience, it was not

uncommon for an agreement to be made on this basis, particularly on MCC appeals where impact on trade was the prime evidence to consider.

39. The appellant believed that Mr Ryall's document proved there was an "interim agreement" reached between the parties regarding the MCC.
40. Mr Garnett referred to Schedule 6 of the Local Government Finance Act 1988 and the assumptions to be made when valuing a non-domestic hereditament. He confirmed the AVD as the 1 April 2008 and the material date for the subject appeals was the 21 March 2011.
41. He submitted that the current assessment of £95,500 RV was excessive having regard to the propositions set out in *Lotus and Delta v Culverwell (VO) and Leicester CC* which established that when arriving at an opinion of RV, the rent should be taken as the starting point. *O'Brien v Harwood* set out the three stages leading to the establishment of a tone of the list, whilst the physical characteristics of the property should be considered in accordance with *W H Smith & Son v Clee (VO)* and *Kotecha v McKillop (VO)*, and the Valuation Office Agency's 2010 Valuation Scales.
42. The Court of Appeal decision of *Ladies Hosiery and Underwear Ltd v West Middlesex Assessment Committee* set out the principle that valuation should be a means of establishing the correctness of the assessment rather than uniformity.
43. However, in *ITM Corporation Ltd v Mooney (VO) & Westminster City Council*, it was stated that there was a very heavy onus on the VO if alterations to the List "*do not result from discovery of mistakes or omissions but arise from a difference of opinion based upon the same facts which were available at the time that the valuation list was prepared and settled.*"
44. The appellant informed the Tribunal that the appeal property was a dated food store, located in the market town of Welshpool with a population of approximately 7,000 people in an agricultural area.
45. Mr Garnett explained that on the 21 March 2011, Tesco opened a new purpose built superstore of 4,595/m<sup>2</sup> in an excellent location fronting the main road with plenty of free customer car parking in comparison to The Co-Operative which was a much older smaller property with no car parking of its own and where customers had to use a small pay and display car park a short distance away.
46. The opening of Tesco completely changed retail shopping on offer in Welshpool which already had a Sainsburys, a Morrisons superstore and a good selection of unit shops. As a result, the Co-Operative could no longer trade viably from the appeal property and consequently closed in 2012.

47. The appeal hereditament was marketed and let to Poundland on the following rental evidence:

|                     |         |
|---------------------|---------|
| 07/08/15 - 16/08/16 | £1      |
| 17/08/16 - 17/08/17 | £1      |
| 17/08/17 - onwards  | £31,000 |

48. Mr Garnett contended that whilst this rental evidence was post AVD of 1 April 2008, it was evidence of the highest order in that it emphasised the fact that no other major retailer wanted the subject property; Lidl did not want to occupy the store and Aldi built a bigger “limpet store” of 1,741m<sup>2</sup> near the Tesco store in 2017. He opined that Poundland occupied the property at a price.

49. Having regard to the House of Lords decision in *Robinson Bros (Brewers) v Durham County Assessment Committee*, he noted that the rent passing on the property was ‘prima facie’ the best evidence. However, the rent needed to be adjusted due to the two years at £1 and the fact that there had been a recession post 2008. He did however accept to some extent that the recessionary impact could be ignored as Tesco was built in 2011 and Aldi in 2017.

50. The appellant contended that he had no choice other than to make an educated guess that the subject property’s assessment should be £30,000 RV based on the facts that the store was dated in design, the retail area had low headroom, did not have retail frontage to the High Street and did not have its own car park only the local authority car park that was never free. Also loading to the store was difficult as trucks had to drive into the adjacent public car park to reverse into the loading bay, which proved difficult even on a quiet Sunday lunchtime. The main street would ‘snarl up’ with the least amount of traffic.

51. In his opinion Welshpool was a quiet depressed little Welsh town whereas Shrewsbury to the east was the main centre of population and public resort and Newtown to the west was a more important centre locally. The main source of employment to Welshpool was agriculture and there was little or no tourism in the immediate area and therefore it was a low value socio economic area.

52. He highlighted that at the material day, Welshpool had the following retailers located within the town:

- A modern Morrisons superstore with a large free car park and good access/egress.
- A good compact Sainsburys with its own car park and two road access points, one being onto an ‘A’ road.
- A good new Tesco superstore in an excellent location.
- A selection of independent shops.

53. Mr Garnett noted that the historic lease and rent passing in September 2007 near to the AVD, were not agreed when Tesco was present and therefore were of no assistance as to evidence of the property's value at the material day.
54. He submitted that the "interim agreement" of £95,500 RV was agreed as a practicable compromise with the express understanding by Colliers International that the assessment would be looked at again and therefore contended it was of no weight. In addition, he pointed out that the appeal was made in respect of Poundland, who cannot be bound by an agreement made on behalf of The Co-Operative.
55. The appellant submitted that the best evidence was that of the new letting to Poundland, which represented the hypothetical tenant coming fresh to the scene. Poundland was given two years at a rent of £1 and then the third year at £31,000 per annum. He indicated that rents passing post AVD have for a long time been considered good evidence for trends and that post AVD rental evidence was approved by the Upper Tribunal as good evidence in case *Go Outdoors v Lamb (VO)*.
56. *Lotus and Delta v Leicester City Council and Culverwell VO* established the hierarchy of evidence and nothing supersedes a letting to a hypothetical tenant coming fresh to the scene.
57. To further support his contention, Mr Garnett submitted the following evidence regarding superstores and large food stores situated in Welshpool and neighbouring towns:
- a) Welshpool - population 6,614  
Sainsburys 1,035/m<sup>2</sup>; Morrisons 2,596/m<sup>2</sup>; Tesco 4,595/m<sup>2</sup>;  
Co-Op 1,371/m<sup>2</sup>  
Total 9,597/m<sup>2</sup> = 1.45m<sup>2</sup>/person
  - b) Newtown - population 11,357  
Morrisons 4,107/m<sup>2</sup>; Lidl 1,351/m<sup>2</sup>; Co-Op 902/m<sup>2</sup>; Tesco 5,903/m<sup>2</sup>  
Total 12,263/m<sup>2</sup> = 1.07m<sup>2</sup>/person
  - c) Llandrindod Wells - population 5,309  
Co-Op 1,509/m<sup>2</sup>; Aldi 1,184/m<sup>2</sup>; Tesco 4,485/m<sup>2</sup>  
Total 7,178/m<sup>2</sup> = 1.35m<sup>2</sup>/person
  - d) Ludlow - population 10,266  
Tesco 3,270/m<sup>2</sup>; Co-Op 2,085/m<sup>2</sup>; Aldi 1,526/m<sup>2</sup>  
Total 6,881/m<sup>2</sup> = 0.67m<sup>2</sup>/person
  - e) Leominster - population 11,691  
Co-Op 1,401/m<sup>2</sup>; Morrisons 5,461/m<sup>2</sup>; Aldi 1,428/m<sup>2</sup>  
Total 8,290/m<sup>2</sup> = 0.7m<sup>2</sup>/person

58. Accordingly based on a valuation of 1,371/m<sup>2</sup> at £22/m<sup>2</sup>, Mr Garnett requested that the Tribunal reduce the appeal hereditament's assessment to £30,000 RV with effect from 21 March 2011.
59. During cross examination, Mr Garnett confirmed that The Co-Operative store continued trading for some 20 months post Tesco opening. However, as trade fell by 100%, the store closed.
60. Responding to Mr Garnett's comment, the VO confirmed that she had not been provided with proof of trade post MCC.
61. Mr Garnett responded and informed the Tribunal that whilst it may be difficult, he may be able to provide the required trade information.
62. The Chair requested a short adjournment in the proceedings. The Members of the Tribunal along with the Clerk retired from the Tribunal Room.
63. Upon returning to the Tribunal Room, the Chair informed the parties that the hearing of the appeal would be adjourned on the grounds that Mr Garnett provide Mrs Jones with his client's trading information, if any, 2 years prior to Tesco opening and for the 20 months post until The Co-Operative store ceased trading. He also explained that having received and considered the required information, she would report her conclusions at the reconvened Hearing.
64. The Tribunal Hearing was reconvened on 2 October 2019. Following opening of proceedings by the Chair, the Clerk enquired with the VO if she had been provided the necessary trade figures by Mr Garnett and if so, did the figures alter her opinion regarding defending the current assessment.
65. Mrs Jones reported that she had received the necessary trade figures from the appellant and confirmed that they had not altered her opinion that the current assessment of £95,500 RV was correct.
66. Having been invited to continue with her cross examination, she enquired with Mr Garnett if he considered that his valuation of £30,000 RV, a reduction in value of 74% to reflect the MCC, sat out of line with other assessments.
67. In response Mr Garnett responded that he was not interested in other assessments. The appeal hereditament was an old property with no car park and in a dis-advantageous position. The opening of Tesco was the final nail in the coffin for his client.
68. He also responded that when he was employed as a VO, he had negotiated similar large reductions for assessments located in England.
69. At the conclusion of the hearing, the Tribunal decided to reserve its decision.

## **The Reasons for Decision**

70. Having considered all the evidence provided whilst having regard to relevant legislation and the referenced case law, the Tribunal decided as follows:
71. In respect of the subject appeals rental value was required to be assessed at rental levels that were in existence at the 1 April 2008, whilst having regard to the physical circumstances that affected the appeal hereditament at the 21 March 2011, the date of the material change of circumstances, the opening of the new Tesco store in Welshpool.
72. The Valuation Officer contended that the appeal hereditament's assessment should remain entered in the 2010 Non-Domestic Rating List at £95,500 RV.
73. In support of her contention, she opined that the rent passing on the subject property on the 27 September 2007 was a good starting point as it was agreed some 6 months before the 1 April 2008 therefore reflecting market conditions along with the advantages/disadvantages associated with the subject property at that time albeit not reflecting the opening of the new Tesco store.
74. The Valuation Officer reported that the September 2007 rent was the basis of the agreement reached between the appellant and the Valuation Office in respect of the 2010 Compiled List appeal from £123,000 RV to £115,000 RV and therefore reflected the value of the appeal hereditament before the Tesco store opened.
75. She confirmed that a proposal submitted by the appellant against the opening of the Tesco store was agreed at £95,500 RV reflecting a reduction of 17.16% in the rate per metre square adopted. However, she did not accept the appellant's contention that little weight should be attached to the agreement as it was based on an "interim agreement" reached between parties.
76. To further support her contention the Valuation Officer highlighted that numerous assessments within Welshpool such as The Spar and other general shops received an allowance of 5%, whereas Sainsburys and Morrisons received 15.3% and 12.5% reduction respectively to reflect the fall in trade.
77. In contrast, the appellant contended that the appeal hereditament's assessment of £95,500 RV was excessive and was based on an "interim agreement" reached between parties suggesting that the appeal hereditament's assessment should to be 'looked at again' if new evidence came to light regarding the impact on trade following the opening of the Tesco store.

78. He stated that the appeal hereditament was located in a depressed town whose main source of employment was agriculture. The subject property was also a small dated property with low headroom, no retail frontage to the High Street and no car parking of its own and following the material change of circumstances was in direct competition with Tesco, Sainsburys and Morrisons, which resulted in The Co-Operative closing in 2012 due to lack of trade.
79. As a result, the appeal hereditament was marketed and let to Poundland at £1 from August 2015 to 2016; £1 from August 2016 until August 2017 and £31,000 from August 2017 until August 2018. He proposed that whilst this evidence was post 1 April 2008, it was evidence of the highest order as it highlighted that no other retailer wished to occupy the subject property.
80. Having regard to the facts and the rental evidence he had provided, the appellant made an 'educated guess' that the appeal hereditament's assessment should be reduced to £30,000 RV and suggested that the passing rent in September 2007 was of no assistance as Tesco did not open until 21 March 2011.
81. In its deliberation the Tribunal was aware that it was for the appellant to demonstrate that the appeal hereditament's assessment was incorrect.
82. It was also of the opinion that there was no evidence to suggest that the agreement reached between the now retired parties was an "interim" measure and more importantly legislation did not specifically provide for "interim agreements".
83. In respect of the subject appeal relevant legislation requires that the appeal hereditament's rental value to be assessed at levels that were in existence at the 1 April 2008, whilst having regard to the physical circumstances that affected the appeal hereditament as at the 21 March 2011.
84. The Tribunal was persuaded that the rent passing on the appeal hereditament in September 2007 should be taken as the starting point as it was the basis of the agreement reached in respect of the Compiled List appeal.
85. It opined that the rental information passing on the appeal hereditament post 2015 was too far removed from the Antecedent Valuation Date for the 2010 Rating List and therefore did not attach much weight to this evidence.
86. The Tribunal was also persuaded that the 17.16% reduction conceded by the Valuation Officer to reflect the material change of circumstance was fair in view of the supporting evidence she had provided.
87. It believed no substantive evidence was provided by the appellant to support his contention for a further reduction in the assessment which in his professional opinion and his own words was 'an educated guess'.

88. In conclusion, the Tribunal reiterated that the persuasive or legal burden of proof was on the appellant to prove his case. It opined that the appellant had failed to substantiate his case for a further reduction. In contrast, the Valuation Officer's evidence indicated that the existing entry was not excessive and that the appeal hereditament's entry of £95,500 RV should remain in the 2010 Non-Domestic Rating List. Accordingly, the subject appeals were dismissed.

89. Certified a true copy 11 October 2019.