

Appellant: Poundland Limited

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

The Matter Appealed against: 2017 Non-Domestic Rating List

Date of Hearing: 2 October 2019

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

Date of Decision: 19 November 2019

Decision of Tribunal: Appeal Allowed

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 appeal arose from a proposal submitted by Colliers International on behalf of Poundland Limited on the 6 July 2018 challenging the Compiled List entry of the Shop and Premises, The Co-Operative Food, Berriew Road, Welshpool, SY21 7SN, in the 2017 Non-Domestic Rating List at £82,000 Rateable Value (RV) with effect from the 1 April 2017.
2. The grounds of appeal as contained in the proposal were: *“The Rateable Value altered to £1 with effect from 01-Apr-17. The entry in the Rating List is incorrect, unfair, excessive and bad in law and should be reduced to £1. Effective Date: 01 April 2017.”*
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.

Agent’s Case

4. Having introduced himself and submitted copies of his presentation to the Tribunal, Mr Garnett clarified that the photographs contained therein served to illustrate the condition of the appeal hereditament as at 9 July 2015 and that the trade information included should be ignored.

5. He reported that the issue of dispute between the parties was the RV applied to the appeal hereditament and he contended that it should be reduced to £30,000 RV with effect from 1 April 2017.
6. The appellant referred to the basis of valuation as defined in 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, which provided the definition of RV of a non-domestic hereditament and the assumptions to be made. He explained that the RV of a hereditament was an estimate of the rental value at the Antecedent Valuation Date (AVD), which for the 2017 Non-Domestic Rating List was the 1 April 2015, whilst having regard to the physical factors and physical setting as they were at the Material Day, the 1 April 2017.
7. Mr Garnett reported that the appeal hereditament was entered in the 2017 Rating List at £82,000 RV which he considered excessive having regard to the propositions set out in case law in respect of *Lotus and Delta v Culverwell (VO) and Leicester CC* (1976) which established that when arriving at an opinion of RV, the rent should be taken as the starting point, and *O'Brien v Harwood* (2003) which 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)* (1978) and *Kotecha v McKillop (VO)* (2014), and the Valuation Office Agency's 2017 Valuation Scales.
8. He also referred to the Court of Appeal decision in respect *Ladies Hosiery and Underwear Ltd v West Middlesex Assessment Committee* (1932) which set out the principle that valuation should be a means of establishing the correctness of the assessment rather than uniformity.
9. In support of his contention that the appeal hereditament's RV was excessive, the appellant informed the Tribunal that the subject property was a dated food store extending to 1,371m², located in the market town of Welshpool, in a non-tourist agricultural area with a population of approximately 7,000 people.
10. Mr Garnett clarified that on the 21 March 2011, Tesco opened a new purpose-built superstore of 4,595m², which as a result changed retail shopping on offer in Welshpool, which already had a Sainsburys, a Morrisons superstore and a good selection of other shops. As a result, the Co-Operative could no longer trade viably from the subject property and consequently ceased trading in September 2012.
11. Following the Co-Operative's closure, the appeal hereditament was marketed and let to Poundland at the following rents:
 - 17/08/15 - 16/08/16 £1
 - 17/08/16 - 16/08/17 £1
 - 17/08/17 - onwards £31,000
12. He opined that the rental evidence was of the highest order and that it also emphasised that no other major retailer wanted the appeal hereditament; Lidl did not want to occupy and Aldi built a bigger "limpet store" of 1,741m² near the

Tesco store in 2017. Consequently, Poundland occupied the subject property at a price.

13. Having regard to the House of Lords decision in *Robinson Bros (Brewers) v Durham County Assessment Committee (1938)*, he opined that the rent passing on the property was 'prima facie' the best evidence. However, the rent needed to be adjusted for the two years at £1 and the third year at £31,000 along with the fact that there had been a recession post 2008 and he questioned whether this area of Wales had come out of the recession? He did however accept to some extent that the recessionary impact could be ignored as Tesco was built in 2011 and Aldi in 2017.
14. The appellant commented that the VO would suggest that the passing rent was not a clean rent. He however contended that the rental evidence was of the highest order and fell into line with the definition of RV as contained within the 1988 Act.
15. Mr Garnett pointed out that whilst the appeal hereditament had repair issues in the past, the subject property was not derelict as suggested by the VO and referred to the photographic evidence of the appeal hereditament's condition as at 9 July 2015. He confirmed that whilst he had not personally surveyed the subject property, as a surveyor when considering the photographic evidence, he estimated that the repair figure would have been in the region of £10,000.
16. Following enquiries and as being the long lessee, the Co-Operative opined that the cost of repair was in the region of £30,000. He also enquired with Poundland as to how much was actually spent and despite numerous requests, Poundland could not provide the requisite information. However, his client confirmed that £29,546 was spent on ventilation and electrics and therefore he could only assume that the Co-Operative had put the property into repair.
17. The appellant then referred to the lease acquisition schedule drawn up between surveyors and solicitors on behalf of the landlord, Wesleyan Assurance Society, and the tenant, Poundland, dated 8 January 2016, which was a sub-lease of the lease agreed on 8 March 1988 between the landlord and the former tenant, Somerfield Stores Limited. Despite every effort, he had been unable to acquire a copy of the original lease. He referred to the following details from the sub-lease:
 - no capital contribution;
 - no works to be undertaken by the tenant;
 - a rent of £1 per annum with effect from 17 August 2015, exclusive of VAT, with no rent-free period, expiring on the 16 August 2016;
 - security of tenure outside the Landlord and Tenant Act 1954;
 - the tenant whilst being allowed to sell anything had a wide usage of the property; and
 - a full repair insuring lease with the tenant keeping the property in good condition excluding repair to the roof and lift which was the landlord's responsibility.

18. Mr Garnett pointed out that the legal definition of RV dictated it was the tenant's responsibility for repair and not the landlord's, however the sub-lease detailed that repairs to the roof and lift were the responsibility of the landlord. Consequently, he assumed that the rent would be higher if the landlord took responsibly for such repairs.
19. He then referred to the renewal lease agreed on 22 September 2017 at £31,000 per annum with effect from 17 August 2017, which was agreed very close to the Material Day of 1 April 2017, and contained the following details:
- security of tenure outside the Landlord and Tenant Act 1954 indicating that at the end of the lease the landlord does not have to allow the tenant to continue with occupation and therefore the tenant had no security of tenure;
 - a break clause on or after 17 April 2018; and
 - the roof and lift being excluded from the tenant's repair liability.
20. The appellant queried that as the tenant had no security of tenure outside the 1954 Act, would the condition effect value? He opined that it would if it were a different property in a better location however not in respect of the subject property as it was difficult to let. He had enquired with colleagues experienced in such matters whom suggested that the difference in value, if any, could possibly be in the region of circa 5-10%.
21. Mr Garnett contended that having regard to his practical experience in valuing shops both within the Valuation Office Agency and private practice, he had no choice other than to make an educated guess in carrying out a valuation on the 'back of a fag packet' in that that the subject property's assessment should be £30,000 RV based on the fact that the store was dated in design, the retail area had low headroom with no retail frontage to the High Street and did not have its own car park only the local authority car park that was never free. He also pointed out that 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.
22. He also pointed out that appeal hereditament was empty for several years before his client occupied the subject property at a price.
23. In the appellant's opinion Welshpool was a quiet depressed small Welsh town whereas Shrewsbury to the east was the main centre of population and public resort with Newtown to the west a more important centre locally. The main source of employment in Welshpool was agriculture and there was little or no tourism in the immediate locality and therefore it was a low value socio economic area.
24. Mr Garnett pointed out that as at the Material Day of 1 April 2017, Welshpool had the following retailers located within the town and was effectively 'over shopped':

- 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 with its own car park in an excellent location; and
 - a selection of local independent shops.
25. He contended that the best evidence was that of the new letting of Poundland, which represented the hypothetical tenant coming fresh to the scene. Poundland was given two years rent free and then the third year at £31,000 per annum. He questioned how to deal with two years rent free along with an expenditure of £29,546 and suggested it was effectively a trade off with the capital sum equating to almost a year's rent. He also commented that whilst one year rent free was outside the formal lease, as at the AVD, the rent passing on the appeal hereditament was a £1.
26. The appellant reminded the Tribunal of the proposition given in *Lotus and Delta v Leicester City Council and Culverwell (VO)* which established the hierarchy of evidence and that nothing supersedes a letting to a hypothetical tenant coming fresh to the scene.
27. He challenged how any competent experienced valuer could ignore the rental evidence passing on the appeal hereditament at the 1 April 2015 whilst having regard to competition and its letting history, reminding that discount retailers such as Aldi, Lidl and Wilko did not want the subject property however Poundland occupied the property at a price.
28. In conclusion, Mr Garnett requested that the Tribunal reduce the appeal hereditament's assessment to £30,000 RV with effect from 1 April 2017.
29. During cross examination, the appellant reiterated that both the Co-Operative and his client Poundland could not provide him with the requisite information. He could only assume that the Co-Operative carried out some repair work as the property was vacant before his client occupied. Poundland confirmed that £29,546 was spent on ventilation, electrics and some plumbing works, which he opined was effectively one year rent free.
30. He did not agree that the majority of leases were covered by the Landlord and Tenant Act (1954) and suggested that it would depend on the type of property.
31. He did not believe that the repair review exclusion from the Landlord and Tenant Act (1954) would have made a difference as both parties agreed to an early break clause.
32. He opined that the market for large shops between 2015 – 2017 would have been weak having regard to some depressed areas of Wales and as a consequence location would have had an influence on the rental market suggesting that a good shop in the right location would rent and conversely, a poor shop in a bad location would not.

33. He also confirmed that the rent of £31,000 was an on-going rolling rent based on an understanding between the parties where the landlord wanted the property occupied and the tenant was happy to continue.
34. The other repairs carried outside the figure of £29,546 spent by Poundland would have been in the majority 'minor issues', as shown in the photographs dated 9 July 2015, and in his experience the repair cost would have been in the region of £10,000.
35. His valuation of £30,000 RV was based on an overall basis and not a price per meter squared.

Valuation Officer's Case

36. Having introduced herself to the Tribunal, Mrs Jones reiterated that the issue of dispute between the parties was the appeal hereditament's compiled list assessment and that she would be seeking confirmation of a reduced assessment of £47,750 RV, with effect from 1 April 2017.
37. She referred to the basis of valuation as defined in 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, and explained that the RV of a hereditament was an estimate of the rental value at the AVD, which for the 2017 Non-Domestic Rating List was the 1 April 2015, whilst having regard to the physical factors and physical setting as it was as at the Material Day, the 1 April 2017.
38. The VO referred to the principles regarding hierarchy of evidence established in *Lotus and Delta v Culverwell (VO) and Leicester CC* (1976) and the direction given in the case of *O'Brien v Harwood* (2003) regarding the establishment of tone of the list.
39. Mrs Jones 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 1371.15m² over the ground and first floors.
40. Referring to the case of *Lotus & Delta*, she intimated that 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.
41. The VO reported the rents passing on the appeal hereditament:
 - £1 August 2015 until August 2016 – sublet from Co-Op to Poundland;
 - £1 August 2016 until August 2017 – sublet from Co-Op to Poundland;
 - £31,000 August 2017 until August 2018 – let from Wesleyan Assurance to Poundland;
 - £31,000 August 2018 for 3 years.

42. Mrs Jones had sought clarification of several issues regarding the rent from Mr Garnett, however he could not provide any further details. She had also requested copies of the leases but to no avail.
43. Regarding the issue of repair, she reported that Mr Garnett stated in his evidence that she had contended the appeal hereditament was derelict. As an explanation, she clarified that she had discovered an online article stating that the subject property was derelict which prompted her to query with him via e-mail as to *“what sort of state was the building in”* and *“did Poundland have to do any works to the property”*. The appellant confirmed that the property was not derelict however it required some works.
44. The VO contended that those works were required to be taken into account when considering the rent and RV. The definition of Rateable Value states that before the tenancy commences, the property was assumed to be in a reasonable state of repair. Mr Garnett provided a report in December 2015 regarding a schedule of dilapidation works quoting a total cost of £33,679 for repairs, which included £18,783 for external repairs. He also provided details that Poundland had spent £29,546 on repairs when it occupied the appeal hereditament in respect of electrics, ventilation and flooring with no mention of any external repairs. She questioned that had the subject property required £18,783 to be spent on external issues to return it into a reasonable state of repair, should not that amount be factored in when adjusting the rent along with the repair costs spent by Poundland. Having regard to this information she suggested that a figure of almost £50,000 worth of work would need to be factored in when adjusting and analysing the rent.
45. Mrs Jones then referred to issues regarding the leases explaining that the first two leases were sublets from the Co-Operative to Poundland and the third was from Wesleyan Assurance to Poundland. The Co-Operative’s lease was to continue until 2022 however despite requesting clarification from Mr Garnett regarding as to what happened with the Co-Operative’s lease, the sublets and the new lease, no information or answers had been provided in the continuing absence of copies of the leases.
46. She opined that when the Co-Operative agreed to sub-let to Poundland, it was assumed that the Co-Operative was in discussions regarding surrendering the lease. As a consequence, the prospect of continuing the lease would have been limited, as it may have been unclear to Poundland whether they would have been able to agree a new lease with the head landlord once the Co-Operative had vacated, which as a consequence would have affected the rent that Poundland would have been prepared to pay.
47. The VO added that as the first two leases were between the Co-Operative and Poundland and the third between Wesleyan Assurance and Poundland, they should not be looked at together as they were with different landlords and therefore should be considered separately. The third lease was from August 2017, two years after the AVD when the market for large shops fell over this period and therefore a rent considered two years post AVD was not ideal.

48. Mrs Jones pointed out that a major issue with the rents was that the leases were contracted out of the Landlord and Tenant Act (1954). She explained that the 1954 Act gave tenants the right to renew their lease at the end of a tenancy on broadly similar terms. Having regard to personal experience she opined that being contracted out of the 1954 Act meant that the tenant had no right to renew the lease, which would have been of benefit to the landlord and therefore was likely to affect how much rent would be agreed. Consequently, the tenant was more likely to pay below market rent as it would have had no security of tenure. She had asked Mr Garnett for clarification as to why these leases were contracted out but to no avail.
49. She reminded the Tribunal of the definition of RV which states that *"the rent at which it is estimated the hereditament might reasonably be expected to let from year to year"*. She commented that if the tenant has no security of tenure then the rent does not comply with the definition of RV.
50. The VO referred to the principles established in *Lotus & Delta* in that *"the more closely the circumstances under which the rent agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of gross value....the more weight should be attached to it"*. She concurred that the rent was a starting point and given all the issues concerning repairs, being contracted out of the Landlord and Tenant Act (1954), two different landlords, lease surrender issues and the third lease being two years post AVD in a falling market, it was clear that the rent did not comply with the statutory definition of RV. Therefore, it was difficult to attach much weight to the rent albeit it provided a guide as to a minimum value.
51. Mrs Jones referred to her comparable properties of other large shops situated in Welshpool and Newtown as follows:
 - The Old Station Yard, Welshpool, SY21 7AY - 834.60m² - £80,000 RV – No IPP, Non-Zoned, £105/m².
 - 35-36 Broad Street, Welshpool, SY21 7RR – 984.60m² - £46,000 RV – No IPP, Zoned at £265/m².
 - National Westminster Bank, Broad Street, Welshpool, SY21 7RP – 270.76m² - £36,500 RV – No IPP, Zoned at £265/m²
 - 16/17 Broad Street, Welshpool, SY21 7SD – 431.63m² - £33,250 RV – No IPP, Zoned at £265/m²
 - Charlies Stores, Market Street, Newtown, SY16 2PD – 1162.52m² - £72,500 RV – No IPP, Zoned at £180/m²
 - Argos, Wesley Street, Newtown, SY16 2NH – 840.37m² - £77,500 RV – No IPP, Zoned at £325/m².
52. Having considered the rent and the comparable assessment evidence available, she opined that Mr Garnett's valuation at £30,000 RV was too low as it sat out of line with other assessments.
53. In summary, Mrs Jones reminded the Tribunal that the leases were contracted out of the Landlord and Tenant Act (1954). Consequently, the tenants had no security of tenure and therefore would have been prepared to pay less rent. The

tenant would also have been required to put the appeal hereditament into a reasonable state of repair and therefore the repair costs needed to be factored in, which would result in the rent being higher. Also due to the likelihood of a lease surrender there would have been reservations in the mind of the tenant as to whether it could continue with its occupation when the sublet had ceased. Likewise, the third lease was two years post AVD in a falling market and although the rent was a starting point, it was of limited assistance albeit it gave an indication as to a minimum level of value.

54. In conclusion, the VO requested the Tribunal confirm a reduced assessment of £47,750 RV, with effect from 1 April 2017.
55. Responding to questions from Mr Garnett, Mrs Jones confirmed that in the absence of the lease and an agreement between the parties, she had no option other than to assume that the rent was low due to the lack of security of tenure.
56. In respect of her comparable assessments she verified that she had not inspected the properties. She accepted the appellant's contention that no appeals had been made against those assessments and his observations in respect of The Old Station Yard, Welshpool, that it was a former converted railway station built in 1870, occupied by the retailers Edinburgh Woollen Mill which catered mainly for tourists. Unlike the appeal hereditament it benefited from its own car park and was located on the main by-pass road to Welshpool. It was a completely different type of property to the appeal hereditament and was not valued by zoning.
57. She confirmed that 35-36 Broad Street, Welshpool, was valued by zoning however it was irrelevant who occupied and when it was built. She also verified that the property at the National Westminster Bank, Broad Street, Welshpool, was a former bank that was valued as a retail premises.
58. In view of the VO's responses, Mr Garnett suggested that her comparable properties were not similar on a like for like basis to the appeal hereditament and that Newtown was not comparable to Welshpool, as Newtown was a larger town. Accordingly, he recommended that the VO's comparable properties be disregarded.
59. At the conclusion of the hearing, the Tribunal decided to reserve its decision.
60. Note not forming part of the decision. Clerical errors were identified in the appellant's submission – Point 7 the Valuation Office Agency's Valuation Scales should read 2017 and not 2010, and at Point 11, the commencement date for the first year at a rent of £1 should read 17 August 2015 not 7 August 2015.

The Reasons for Decision

61. Having regard to relevant legislation, the referenced case law and the evidence provided, the Tribunal decided as follows:

62. The Tribunal was mindful that Non-Domestic property must be valued in line with the statutory definition of Rateable Value, as contained 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, and in accordance with The Rating Lists (Valuation Date)(Wales) Order 2007, Statutory Instrument No: 2007/3153 (W269), which determined that the appeal hereditament must be valued by having regard to rental values achieved at the Antecedent Valuation Date, 1 April 2015, whilst looking at the physical circumstances of the property at the Material Day, 1 April 2017.
63. It was also aware that the appeal hereditament must be assumed to be “vacant and to let” and cannot have regard to the actual trade of the occupier and that it was important to ascertain whether a tone of value had been established.
64. Referring to the statutory definition of Rateable Value and the Lands Tribunal judgement in *Lotus & Delta v Culverwell (VO) and Leicester City Council (1976)*, the Tribunal was mindful that the best evidence was provided by rents synonymous with the statutory definition, passing on the subject property and which required little or no adjustment.
65. The Tribunal was also conscious of the High Court case of *Vines Ltd v De Mauny (VO) (2010)* which provided guidance that it was for the appellant to demonstrate that the existing assessment was incorrect and not for the Valuation Officer to prove that it was right. However, the case of *Oldschool & Oldschool v Coll (VO) (1995)* offered guidance in that the Valuation Officer was required to provide comprehensive, impartial evidence to achieve correct assessments and not simply to win rating appeals.
66. Therefore in respect of the subject appeal, the Tribunal’s determination simply fell either in favour of the appellant, who referred to the rent passing on the appeal hereditament in support of his contention for a reduced assessment of £30,000 RV, or the Valuation Officer, who had regard to the passing rent as an indication to the minimum level of value along with cited comparable assessments of large shops within Welshpool and Newtown in support of a revised assessment of £47,750 RV.
67. It was unfortunate that the agent had been unable to provide a copy of the lease agreed between Wesleyan Assurance Society and the Co-Operative. However, in absence of that lease, the Tribunal could only assume that the repairs were carried out under the sub-letting between the Co-Operative and Poundland, which would have been amortised over the length of that lease, which was effectively £1 per annum for two years. However, the Tribunal attached little weight to that rental evidence as it appeared that the Co-Operative wanted to avoid paying empty property rates for the period concerned, where it was tied into the head lease, and consequently was attempting to surrender it.
68. However, the Tribunal was persuaded by the appellant that the passing rent of £31,000 agreed in September 2017 should be utilised, as the rent was reasonably clean apart from the tenant’s lack of security of tenure and the landlord’s retention of responsibility for repair to the roof and lift. In the absence

of any other comparable rental information to the contrary, the Tribunal attached greater weight to the rent agreed between the landlord and tenant passing on the appeal hereditament.

69. This was also supported by the history in respect of the appeal hereditament where prior to Poundland occupying in August 2015, the subject property had been empty for over 3 years since the Co-Operative vacated in September 2012, which highlighted the disadvantages associated with the appeal hereditament i.e. dated design, low retail area headroom, no retail frontage to the High Street, no dedicated parking and poor loading/unloading facilities.
70. Whilst the Members appreciated that the lease lacked the opportunity for the tenant to automatically renew, it was agreed for a term of 3 years and case law has stated that the definition of RV requires a rent on an annual basis with a reasonable prospect of continuance.
71. It was also noted that numerous major retail stores were present in Welshpool, and at that time, none were interested in occupying the appeal hereditament other than for Poundland, who sub-let the subject property from the Co-Operative in August 2015 for two consecutive years at £1 before negotiating a new lease with the landlord, Wesleyan Assurance Society, at £31,000 in September 2017.
72. The Tribunal attached limited weight to the comparable properties relied upon by the Valuation Officer, as they were either town centre retail type units within Welshpool, other than The Old Station Yard which was a former converted railway station, or were located in the different town of Newtown. The Tribunal was also conscious that the Valuation Officer had not inspected the properties and therefore was not aware of each comparable property's character or location.
73. The Valuation Officer was seeking a reduction in the original complied list assessment from £82,000 RV to £47,750 RV based on the assumption that there was a downturn in shop rental values between 2015 and 2017; however, no evidence was provided to support this contention.
74. Accordingly, the Tribunal allow the appeal as contended by the appellant and confirm that the entry in the 2017 Non-Domestic Rating List in respect of the Shop and Premises, The Co-Operative Food, Berriew Road, Welshpool, SY21 7SN, be amended to £30,000 Rateable Value with effect from 1 April 2017.

Certified a true copy on 18 November 2019