

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: CBRE Ltd agent for Sportsdirect.com (Occupier)

Appeal Property: Unit 8 Withybush Retail Park, Fishguard Road,
Haverfordwest SA61 2PY

Appeal number: 684530976310/285NV17

The Matter Appealed Against: 2017 Rating List

Date of Hearing: Friday 29th January 2021

Appearances: Mr James Towersey (for the appellant) and Mrs Tina-Suzanne Davies (for the respondent Valuation Officer)

Date of Decision: 26th February 2021

Decision of Tribunal: Appeal allowed

Members of the Tribunal: Mr M Mason (Chairperson) & Mrs LM Thomas

Tribunal Clerk: Mr G Harris

Introduction:

1. The appeal under consideration followed a proposal made by CBRE Ltd on behalf of Sportsdirect in respect of Unit 8 Withybush Retail Park, Fishguard Road, Haverfordwest SA61 2PY which the respondent Valuation Officer received on 1st October 2018. The proposal sought a reduction in the Rateable Value (RV) of the appeal property from £172,000 to £10 with effect from 1st April 2017 on the following grounds –

The Rateable Value in the 2017 as at 1 April 2017 was inaccurate because it was incorrect, excessive and bad in law.

2. With the agreement of both parties the appeal was decided by two members. Both the appellant and respondent Valuation Officer (VO) attended the hearing via video link.
3. This is a summary of the case and is not intended to be an exhaustive record of the proceedings. However, the parties can be assured that all the evidence was fully considered by the tribunal when it arrived at its decision. Consequently, the absence of reference to any statement, or evidence, should not be construed as being overlooked.

Summary of the Case

4. Mr Towersey explained that he was representing CBRE Ltd on behalf of Sportsdirect. The appeal had been submitted on 1st October 2018; discussions had commenced during January 2020 however had not progressed. The current assessment of £172,000 RV was based on a value of £185/m² which both parties agreed was too high. There had been an exchange of correspondence during December 2020, following the appeal being listed for hearing, however the parties could not reach an agreement on the price per sqm to be applied to the valuation.
5. Mr Towersey had inspected the property on 28th June 2018 and confirmed that the facts were not in dispute. Mr Towersey described the appeal property as being located within Withybush Retail Park which was situated adjacent to the A40 Fishguard Road to the north of Haverfordwest town centre. The retail park consisted of 8 retail warehouse buildings of steel portal frame construction developed in the 1980s. The main block comprised a terrace of 7 adjoining units occupied by M&s, Boots, Next, Laura Ashley, Oak Furnitureland, TK Maxx and Debenhams. Car parking was provided to the front and side of the main block.
6. Mr Towersey provided a location plan and photographs of the appeal property describing it as a standalone unit situated to the rear of the main block, offering ground floor retail accommodation with an additional supported storage floor. Mr Towersey explained that the appeal property was not visible when driving into the retail park as it was located to the rear of Debenhams and shielded by the other units.
7. The appeal property was held by Sportsdirect.com Retail under a lease for a term of 15 years commencing 29th September 1998 at a passing rent of £132,924 per annum. The passing rent was subject to review every 5 years on an upward only basis. The rent had been reviewed on 29th September 2013 and 29th September 2018 and had been agreed at a nil increase on both occasions, the passing rent had therefore remained at £132,924 per annum. Mr Towersey contended that the landlord had 2 opportunities in which to increase the rent, with the 2013 review 18 months pre the Antecedent Valuation Date (AVD). The rent analysed to £143.18/m².
8. Mr Towersey referred to the Rating Hypothesis and the case *Lotus & Delta v Culverwell (VO) & Leicester City Council* (1976) which established that the rent should be taken as the starting point when considering evidence in the rating context. Mr Towersey contended that the rent paid reflected that the hereditament was hidden behind the main parade of units.
9. Mr Towersey provided details of the rental evidence in relation to the other units located on the retail park. Unit 1 had been let to M&S on a 25-year term commencing 21st June 2010, at a rent of £551,815 set in June 2015 on a fixed increase basis. The unit was 2,583.9m² and the rent devalued

to £214/m². The current RV was £545,000 based on £170/m², some £40 below the devalued rent.

10. Mr Towersey did not consider the letting at Unit 5 to be good evidence as it had been set 2 years past AVD, however the rent of £162,626 per annum devalued to £231/m², the RV of £166,000 was based on £210/m². Unit 6 was let to TK Maxx on a 15-year term commencing 4th August 2014 at £233,080 which devalued to £243/m², the current RV of £217,000 was based on £200/m². Unit 7 was let to Debenhams on a 15-year term with effect from 25th March 2013, 2 years pre-AVD, at £345,510 which devalued to £246/m², the current RV of £312,500 was based on £170/m². Units 2 and 3 had been agreed on a revised basis of £200/m² and Mr Towersey understood that the VO was proposing a revised base rate of the same amount for units 4, 5 and 6.
11. Mr Towersey noted that the rents relating to the front block devalued to between circa £210/m² and £245/m². The unit rates under the 2017 List were some way below the passing rents at £170/m² for units 1 and 7 and £200/m² for units 2 to 6. This was in sharp contrast to the rent payable at the appeal property which devalued to £143/m². Mr Towersey highlighted that the rent review relating to the appeal property during September 2013 had occurred 6 months post Debenhams being on the site and despite this the rent had not been increased. Mr Towersey contended that there was therefore a clear differential between the rents pertaining to the front 7 units and that of the single unit to the rear of the development.
12. Comparing Debenhams with the appeal property, Mr Towersey noted that the Debenhams rent analysed at £166/m² and the unit had been assessed at £170/m², indicating 2 years of no retail growth. With the appeal property rent set 18 months post-AVD, Mr Towersey could see no reason for the RV to be set above £143/m² otherwise the appeal property was being treated differently and giving Debenhams an advantage. Mr Towersey's valuation of the assessment, which he believed tied in with the passing rent, was as follows –

Description	Area/m ²	Price/m ²	Value
Ground floor sales	928.4	£142.50	132,297
Supported storage floor	67.0	£15.00	1,005
Subtotal			133,302
		RV	£133,000

13. In conclusion, Mr Towersey contended that the current assessment applied to the 2017 Rating List was excessive. In particular, the base rate applied by the VOA was excessive in comparison with the open market rental evidence at the appeal property which he believed to be the best evidence available. In light of this he requested that the Tribunal confirm a revised assessment of £133,000 with effect from 1st April 2017.
14. Mrs Davies introduced the appeal property and provided the Tribunal with a photograph and plans of its location. Mrs Davies explained that the appeal property was one of the first to be built at the retail park and was

masked by the other units, Debenhams at Unit 7 was slightly set back from the other units and had been built later. Mrs Davies agreed the current RV £172,000 was excessive.

15. Mrs Davies had looked at the basket of rents available at the retail park and referred the Tribunal to a schedule of rental evidence provided in her evidence. Appeals relating to units 1, 2 and 3 had been discussed and agreed with agents representing the occupiers.
16. Mrs Davies did not believe that looking at the passing rent as a standalone was the correct approach as the appeal property was not isolated to the point of being different to the other units, as such Mrs Davies believed that using a basket of rents to determine the correct unit rate was appropriate in this case. Having considered the rents and settlement evidence on the park Mrs Davies proposed a reduction to £165/m², bringing the assessment back to the 2010 list figure of £154,000. Mrs Davies revised valuation was as follows –

Description	Area/m²	Price/m²	Value
Ground floor sales	928.4	£162.00	153,186
Supported storage floor	67.9	£15.00	1,019
Subtotal			154,205
		RV	£154,000

17. Responding to the appellant's case Mrs Davies observed that the 2013 rent referred to was in fact a rent set upon review in 2008 and in her opinion did not reflect the hypothetical rental value at the AVD. The 2010 value had been agreed at £145/m² having regard to the 2008 rent review and had been subsequently increased to £165/m² following the opening of Debenhams with effect from 24th October 2013, this figure had not been appealed against.
18. Referring to a schedule of rental evidence Mrs Davies explained that rents on the park showed an increase in value between the opening of Debenhams in 2013 and the AVD. The differential agreed due to location for the 2010 list being 6.5%. Mrs Davies believed the rents supported a revised tone of £165/m² for the appeal property which equated to a 17.5% differential with the other similar sized units and reflected its location.
19. Mrs Davies had valued the appeal property having regard to the hypothetical tenancy, assuming the unit was in reasonable repair and vacant. Rental information returned to the VOA noted that the lease for Unit 8 had been agreed in 1998 for a shell unit over a term of 25 years subject to 5 yearly rent reviews. It was Mrs Davies' opinion that a long-standing tenant deemed to have a strong covenant would have a stronger negotiating position than a new tenant fresh to the scene, with the nil increase reflecting the landlord's willingness to fulfil the term of the lease whilst guaranteeing a set level of income. Mrs Davies did not believe this to reflect a true open market let at the AVD.

20. Having considered the rents and settlements on the park Mrs Davies requested that the Tribunal confirm the revised figure of £154,000.
21. Under cross examination Mrs Davies indicated that she would be prepared to offer a revised figure of £155/m².
22. At the conclusion of the hearing, the tribunal decided to reserve its decision.

The Reasons for Decision

23. Having considered all the evidence placed before it the tribunal decided as follows: -
24. In line with the case *Lotus & Delta v Culverwell (VO) & Leicester City Council (1976)* the Tribunal believed that rent should be taken as the starting point when considering the evidence in this appeal. After considering the appeal property's location within the retail park the Tribunal did not believe it to be truly comparable to the other units. It considered the other units to be in superior positions which was reflected in the rent differential.
25. Although the Tribunal treated the rent review evidence with some caution, as the rent had not been tested in the market, it noted that the rent had not increased upon review despite being agreed some 6 months after the opening of Debenhams. The 2010 increase from £145/m² to £165/m² following the opening of Debenhams had not been reflected in a subsequent rent increase which the Tribunal felt a landlord negotiating a rent review could have taken into account with the opening of an anchor tenant such as Debenhams.
26. The Tribunal, taking the rent as a starting point and considering the above, noted that the Debenhams rent analysed at £166/m² and the unit had been assessed at £170/m² and saw no reason to treat the appeal property differently. Therefore, the Tribunal accepted Mr Towersey's contentions and allowed the appeal. The Tribunal orders the Valuation Officer to amend the Rating List in respect of Unit 8 Withybush Retail Park, Fishguard Road, Haverfordwest SA61 2PY to RV £133,000 with effect from 1st April 2017.

Certified a true copy on 26th February 2021