

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appeal No.: 693030644426/541NV17/18

Appellant: Brown & Merry Commercial agent for Demipower 2017 Ltd

Appellant's Address: Kentucky Fried Chicken (KFC), Baglan Retail Park, Afan Way, Port Talbot SA12 6NR

The Matter Appealed against: 2017 Rating List

Date of Hearing: 13 November 2020

Appearances via zoom: Mr P Symonds of Brown & Merry Commercial (Agent)
Mr C Preston for the respondent Valuation Officer (VO)

Date of Decision: 26 February 2021

Decision of Tribunal: Appeal allowed in part

Members of the Tribunal: Mr AG Hallett (Chair), Mr J Pickering & Mr AE Sangster

Tribunal Clerk: Mrs S J Gwilliam

Introduction:

1. The Agent contended, in a proposal to alter an entry in the 2017 Rating List (the List) received by the VO on 21 March 2018, that the Rateable Value (RV) of the appeal hereditament was inaccurate and that the present assessment of £67,000 RV was incorrect, excessive and wrong in law and should be reduced to £50,000 RV with effect from the 1 April 2017.
2. In accordance with the Valuation Tribunal for Wales Best Practice Protocol 2A(a) – Remote Hearings through the use of video conferencing software, the parties provided the Clerk with electronic copies of their submissions two working days before the hearing. The Tribunal Members were provided with copies of the parties' submissions at the hearing.
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 Agent's Case

4. Mr Symonds introduced himself to the Tribunal and outlined his qualifications and experience. He explained he has many years' experience of dealing with drive-thru restaurants and that his client has 110 sites throughout the UK. The agent stated that of the 28 KFC restaurants located in Wales, he had submitted appeals against 17 assessments, whereas he had only submitted 4 appeals against some 80 restaurants within England.
5. Prior to presenting his case, the agent referred the Members to the VO's submission pack and raised concerns regarding incorrect size information held on several properties which could

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give a false level of value and result in an unfair advantage. He explained that McDonald's has a scheme of constantly rejigging its sites and as the VO has a statutory duty to maintain a correct rating list where possible inaccuracies are brought to the VO's attention; investigations should be undertaken.

6. In relation to his presentation of evidence, Mr Symonds referred the Members to the economic background of Port Talbot Steelworks between 2014-2016 which resulted in the loss of 750 jobs at the plant on the 18 January 2016. He added that Port Talbot was a deprived area on the 1 April 2015.
7. Turning his attention to the appeal hereditament, the Agent explained that it is located on Baglan Bay Retail Park. Other properties on this site included Subway, B&M Bargains, Lidl and Morrisons.
8. Mr Symonds referred to his summary of VO's evidence to drive-thru units located on various retail parks in South Wales:

<u>Item no./Address</u>	<u>Change in rent</u>	<u>Change in rating values on retail units on park</u>			
			<u>2010</u>	<u>2017</u>	
A. Item 1 on VO Reg 31 Burger King, Morriston, Swansea SA6 8PS	Nil 2010-15	Asda	£2.35m	£1.91m	down 19%
		Unit 3	£22,500	£19,250	down 15%
		Unit 4	£28,750	£24,000	down 17%
		Overall downturn on Asda and 5 other retail properties 18.2%			
B. Item 5 on VO Reg 31 KFC, Waterfront, Barry CF63 4BA	Nil 2009-14	Morrisons	£1.43m	£1.21m	down 15%
		Unit 4	£244,000	£220,000	down 9%
		Unit 2	£95,000	£80,500	down 15%
		Overall downturn on Morrisons and 4 retail warehouses 16.2%			
C. Item 13 on VO Reg 31 Burger King, Vale of Neath Retail Park SA10 7AE (Note: Burger King linked to Retail Warehouses under bridge)	Nil 2008-13	Carpetright	£74,500	£61,500	down 17%
		Topps Tiles	£52,500	£43,000	down 17%
		Halfords	£91,500	£67,000	down 26%
		Overall downturn on 3 retail warehouses 21%			
Also					
D. KFC East Retail Park, Newport (Note: large retail park with KFC right at the entrance)	Nil 2007-17	Unit 3 B&M	£124,000	£90,500	down 27%
		Unit 8 P'land	£185,000	£175,000	down 5.5%
		1b The Range	£430,000	£292,500	down 32%
E. Item 3 on VO Reg 31 KFC Welsh Designer Outlet, Bridgend CF32 9SU (90 designer outlets)	Increase 7.1% 2012-2017 £73,528-£78,780	Assessments rise by 11% over the park e.g. Unit 26 £127,000-£139,000 Unit 16 £126,000-£138,000			
F. Item 6 on VO Reg 31 KFC Park Trostre, Llanelli SA14 9UY - Popular major retail park	Increase 11.1% 2010-2015 £80,475-£89,900	Assessments rise by around 10% over the park e.g. Unit 15 £77,000-£90,000 - +16% Unit 12 £61,000-£67,000 - +10%			

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G. Item 7 on VO Reg 31 KFC Morfa Shopping Park, Swansea SA1 7BP	Increase 6% 2010-2015 £77,250-£81,885	Assessments rise by around 6% e.g. Boots £260,000-£277,000 T K Maxx £321,000-£342,500
H. Item 9 on VO Reg 31 McDonald's Glamorgan Retail Pk	Increase 4.49% 2011-2016 £58,996-£61,650`	Assessments rise by around 9.5% e.g. Unit 9 £168,000-£200,000 – 19% Unit 8 £425,000-£457,500 – 7.6% Unit 4 £352,500-372,500 – 5.6%

9. He then referred to the summary of VO's evidence related to drive-thru units not located on retail parks in South Wales:

Item number/address

I. Item 2 on VO Reg 31 KFC Bridgend CF31 3LJ	This is a roadside unit. Assessment agreed based on its own rental evidence. Note: rent showed modest increase of 3.4% over 5 years – 2009 to 2014
J. Item 4 on VO Reg 31 KFC Pontypool NP4 0XB	This is also a roadside unit. Assessment agreed based on rent. Note: The October 2013 rent was a Nil Increase on 2008
K. Item 8 on VO Reg 31 McDonald's, Cwmdru Industrial Estate, Gendros SA5 8LG	This is a unit accessed off an industrial estate. Previous rent not known. Note: VO survey details out of date. Details sent to VO 7/11/20. Planning records show McDonald's state 305sqm prior 5.3sqm extension.
L. Item 10 on VO Reg 31 KFC Castle View Retail Park, Rhuddlan, Rhyl LL18 5AQ	This unit is some 150 miles from the appeal property and offers no real assistance in my opinion.
M. Item 11 on VO Reg 31 KFC Holyhead Retail Park LL65 2UW	This unit is some 150 miles from the appeal property and offers no real assistance in my opinion.
N. Item 12 on VO Reg 31 KFC Pontymister Ind. Estate, Risca NP11 6NP	This is a roadside unit situated on an industrial estate. The rent shows a 9.2% increase over 5 yrs

10. Additionally, Mr Symonds provided the Tribunal with details which depicted the changes in RVs of those properties situated on Baglan Retail Park which occurred between the 2010 and 2017 Rating Lists including the appeal property, Morrisons, Lidl, Subway and five retail warehouses. With the exception of the appeal property and Lidl which had shown a 16.6% and 5.6% increase respectively, the other assessments decreased by values of between 11% and 20%.
11. The Agent then turned his attention to other drive-thru restaurant and premises within the locality.
12. McDonald's, Afan Way, Port Talbot SA12 6LL was assessed in the 2010 List at £230/m² £65,000 RV and in the 2017 List at £245/m² £69,000 RV showing an increase of 6.5%. Mr Symonds stated that the area of this property had increased from the 276m² whereas VO

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records show 338m². In support he provided the Tribunal with an extract from the planning application dated the 24 June 2016 along with a photograph which shows the completed flat frontage which replaced the former staggered frontage.

13. Burger King, Princess Margaret Way, Port Talbot SA12 6QW was assessed in the 2010 List at £115/m² £37,000RV and £130/m² £41,750 RV in the 2017 List. Mr Symonds explained that this property is situated circa one mile from the appeal property and was a substantial modern drive-thru fast-food restaurant with extensive parking overlooking Swansea Bay. The Agent added that this property was apparently let to Burger King shortly after the Antecedent Valuation Date in December 2015 at a rent of £50,000 p.a. and given the floor area of 322.6m² equated to £155/m².
14. The VO holds a Form of Return providing rental information on this property; however, it had not been included in the Regulation 31 Notice issued by the VO. Mr Symonds maintained that the VO stated that the aforementioned was not an open market rent and offered him no further explanation. However, whilst the VO sought to dismiss the rental evidence Mr Symonds believed that substantial regard had been had to the rent since it is assessed at £130/m² £41,750 RV. The Agent concluded that the above does not suggest any substantial demand for drive-thru restaurants in Port Talbot in 2015.
15. KFC and Burger King Heron Way, Morriston, Swansea, are both located on the approach to a huge Asda supermarket and several smaller retail warehouses. The values applied to Asda and the retail warehouses for the 2017 List were some 17-20% lower than those agreed in the 2010 List. Whilst there was no pertinent information on the KFC, the rent of £75,000 p.a. on the Burger King was a nil increase agreed in September 2010. The matter was discussed between agents and a nil increase was agreed in September 2015. The lease contained the standard "upward only" rent review provisions which meant that the rent cannot go down from that agreed in 2010. The Agent maintained that in reality it was quite possible that the true open market rental at that date would have been less than the 2010 figure and would be in line with the falls in value on the other properties on that site.
16. An agreement had been reached regarding the KFC assessment on the site which had been reduced from £91,500 RV to £81,500 RV. This represented a nil increase on the 2010 List assessment. Therefore, Mr Symonds concluded that there was no rental evidence on this retail park to support any increase in value on a drive-thru restaurant on the same development.
17. Concluding his case, the Agent stated that Port Talbot was suffering significant job losses before and after the AVD in the run up to the 2017 Rating List. The appeal property is situated on a retail park where it seeks passing trade from the other stores on the site. Those other properties have seen an overall fall in value of 13.5%. The Subway unit, a drive-in food takeaway, located adjacent to the appeal property showed a fall in RV of 16% between the two lists.
18. Conversely, on any retail parks where background retail values had risen, indicating improving trade and demand, the rents on the drive-thru restaurants had risen by 4 - 11% thereby demonstrating an indirect link.
19. The McDonald's unit provided no guidance as it did not represent an assessment where the values applied were accepted as being correct. The values were patently too low because the

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floor areas were incorrect, and no appeal would ever be made in those circumstances. Records show the area as 338.2m² therefore the current valuation of £69,000 equated to £211/m².

20. The Burger King located one mile from the appeal property assessed at £130/m²; the rent available did not suggest any significant demand for drive-thru restaurants in Port Talbot in 2015.
21. Consequently, Mr Symonds requested that the Tribunal to allow the appeal in part and reduce the appeal property to £240/m² £57,000 RV with effect from the 1 April 2017.
22. No questions were asked of the Agent's case.

Summary of the VO's case

23. Mr Preston outlined the general history of the hereditament. He stated that the hereditament was initially entered into the 2000 Rating List on the 25 November 2002 and assessed at a rate of £220/m² £52,750 RV, which was not appealed.
24. A proposal submitted against the compiled list entry in the 2005 Rating List against the £260/m² ascribed was settled in March 2007 at a rate of £235/m² £56,000 RV.
25. A proposal submitted in respect of the 2010 Rating List compiled list entry resulted in a reduction of the unit rate from £260/m² to £240/m² £57,500 RV.
26. The VO explained that the issue before the Tribunal related to an appeal made by the Agent against the current compiled list entry in the 2017 Rating List which was assessed at a rate of £280/m² £67,000 RV. The proposal requested a 34% reduction to £50,000 RV equating to £208.59/m², some 15% lower than the 2010 Rating List entry.
27. Mr Preston referred the Members to the RICS Guidance detailed within his submission. He stated that it is pertinent to have regard to this information and whilst, in this instance, some of the guidance is more relevant than others, he highlighted the salient points.
28. He explained that direct rental evidence of the same class of property is more valuable than rental evidence derived from different properties which form a different market; the market sentiment for the likes of Argos, Dreams, etc occupying warehouse type properties is different to that of an occupier of a drive-thru restaurant.
29. Furthermore, whilst he appreciated that rents agreed after the AVD were generally not viewed as being of assistance, he had included rental evidence within his submission which were agreed after the AVD to show the growth in the market for drive-thru properties. In support of the aforementioned, the VO briefly outlined the cases of *Lotus & Delta Limited v Culverwell (VO)* and *Leicester City Council (1976)*, *Ladies Hosiery and Underwear Ltd v Middlesex Assessment Committee (1932)* and *Urban and Civic v M J Dunlevey (VO) (2013)*.
30. The VO referred the Tribunal to extracts from the VOA Rating Manual Section 6 Part 3: Section 365 which discusses drive to and drive-thru restaurant accommodation and the approach to assessment. He explained that in the vast majority of cases, leases relate to a shell only and an adjustment is required to reflect the value of the fitting out, which is usually 10%. Freezer or

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chiller unit pods have also traditionally been attached to the rear of some drive-thru restaurants which are almost invariably a tenant's improvement so not included within the rent. Consequently, the adjusted rent should be analysed against the GIA excluding the freezer/chiller pod.

31. Mr Preston explained that the appeal hereditament was located on an established retail park within Port Talbot. Other occupiers of the retail park included Lidl, Morrisons, B&M Bargains, Dreams, Subway, Pets at Home, Halfords and the Food Warehouse. Baglan Industrial Park is situated immediately southeast to the retail park and Tata Steel works are located some four miles to the southeast.
32. The retail park and subject hereditament are situated to the north of the A241 (Afan Way) and accessible off a roundabout connecting to Christchurch Road. It is located circa two miles to the west of junction 41 of the M4 motorway and some five miles from the neighbouring town of Neath.
33. The subject property was purpose built in 2002 and comprised a single storey drive-thru restaurant with external elevations of a brick construction beneath a flat roof. It measured 239.70m² (GIA) and benefited from some 15 car parking spaces.
34. Mr Preston informed the Tribunal that the property was held as freehold therefore there was no passing rent to analyse.
35. The initial email from the Agent outlined RV reductions from the 2010 List in respect of different classes of property classes on the retail park, including Morrisons and Subway, and he suggested a 16% reduction. In that email, the Agent also referred to Burger King, Princess Margaret Way, Port Talbot which is located around one mile to the south of the appeal property and occupied a substantially inferior micro location.
36. The VO explained that according to information supplied via a FOR, Burger King was let for a term of 20 years commencing December 2015 and subject to 10 yearly rent reviews. Further, the FOR stated that there were factors affecting the rent as a deed of variation was thought to be in place with a new lessee following the previous lessee going into liquidation. The passing rent was agreed at £50,000 p.a. on the 1 August 2018 and was outlined as being agreed on some other basis and not based upon open market value. This rent devalued to £170.49/m² with fit at 10%, which was clearly out of line with the national and regional tone, thereby exemplifying that this was not an open market transaction. Consequently, Mr Preston attached little weight to this evidence.
37. Mr Preston expanded upon his belief that the Agent's contention comparing retail warehouses to drive-thru restaurants was an inappropriate basis for comparison and approach to valuation. He explained that the market sentiment, appetite and indeed value in respect of retail warehouse accommodation in comparison to drive-thru property is entirely different as they occupy very different markets and have their own evidence base in terms of value. A decline in the value of retail warehouse accommodation should not be considered as sufficient evidence to support a reduction or nil increase in respect of drive-thru accommodation.
38. With reference to the Subway drive-to restaurant located on Baglan Retail Park which had seen a decline between the 2010-2017 Lists, the VO clarified that drive-to restaurants form part of a different market; drive-thru restaurants are more valuable as they offer both dine in and

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takeaway options. Additionally, drive-thru restaurants can make better use of the kitchen area because its capacity is not limited to the seating capacity within the restaurant.

39. Further, drive-thru restaurants are a national class with its own evidence base. Since there are only a limited number of this type of property within a locality and many are held on a freehold or long leasehold basis and are owner occupied, the search radius is expanded and adjusted thereafter.
40. In relation to the retail parks mentioned by the Agent, Mr Preston told the Members that some of the large foodstores had seen increases in values on the 2010 Rating List. He explained that they are a national class with their own evidence base and values for these properties are not derived from retail warehouse values. He gave an example of Lidl, Baglan Retail Park, a large foodstore located adjacent to the appeal property, an appeal was settled at a rate of £138.75/m² £226,500 RV, an increase of 5.92% on the agreed 2010 Rating List entry.
41. The VO referred to research undertaken by several reputable companies which found how the fast-food market had adapted to technological advancements, customer preference for convenience and the overall growth within the sector with a number of less traditional drive-thru retailers now entering the market. In addition, the ability of drive-thru restaurants to accommodate for social distancing during the covid-19 pandemic, the drive-thru market looked set to continue expanding.
42. Mr Preston then turned his attention to evidence of the other drive-thru restaurants within the area.
43. Burger King, Vale of Neath Retail Park, Cadoxton Road, Neath, occupied a position on a standalone site six miles north of the appeal property. It measured 231.20m² (GIA) and was constructed in 1998. The property was let for a term of 25 years in October 1998 at an initial rent of £57,000 p.a. subject to five yearly open market value rent reviews. The lease assumes a fitted rent so there was no addition for fit out. The October 2013 rent review was understood to be agreed at £60,500 p.a. and October 2018 at £64,500 p.a. which analysed to £261.68/m² and £278.98/m² respectively. The latter rent reflected an increase of 6.61% over the five-year period or an annual increase of £1.32% p.a. Consequently, the VO calculated that the rent would have increased by 1.89% up to the 1 April 2015 which equated £61,643 or £266.62/m². The property was subject to a proposal whereby verbal agreement awaiting client approval had been reached at £266.50/m².
44. KFC Park Trostre. Llanelli, located on the Trostre Retail Park some 19 miles to the northwest of the appeal property, was purpose built in 2004 and measured 275.30m² (GIA). This property was let on lease commencing 6 May 2005 with an initial rent of £75,400 p.a. with five yearly upwards only rent reviews to open market value. The May 2010 rent review was agreed at £80,475 p.a. The two rents equated to £292.32/m² and £321.55/m² when adopting fit out at 10%. The May 2015 rent review was agreed at £89,900 p.a., which after adopting 10% fit out, equated to £359.21/m². Mr Preston explained that the rent reflected growth of 11.71% from May 2010 to May 2015.
45. KFC Unit 17a Morfa Shopping Park, Brunel way, Pentrechwyth, Swansea, located approximately 9 miles northwest to the subject property, was a modern drive-thru constructed in 2005 attached to a Pizza Hut restaurant and measured 281.2m² (GIA). It was let on a 15-year lease in February 2005 at an initial rent of £72,500 p.a. subject to five yearly upwards only

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rent reviews to market value. The February 2010 rent review was settled at £77,250 p.a., which devalued to £302.19/m² when adopting fit out at 10%. The February 2015 rent review was agreed at a rent of £81,885 p.a., which devalued to £320.32/m² including fit out. The VO stated that this rent review was just one month and 24 days before the AVD and reflected a 6% increase of the February 2010 or 1.20% p.a.

46. McDonald's, Brunel Way, Morfa, Swansea, was purpose built in 2019 and arranged over two floors extending to 531.60m² providing 409.80m² ITMS (GIA). Located circa nine miles from the subject property, the accommodation was subject to an open market letting in April 2019 for a term of 20 years at an initial rent of £132,005 p.a. Assuming fit out at 10% the rent devalued to £412.02/m². Since no information was available regarding a rent-free period, the VO assumed a 12-month rent free period was granted and capturing nine months of that period into the analysis, the rent devalued to £371.66/m² when adopting a 10% fit out.
47. McDonald's, Cwmdy Industrial Estate, Carmarthen Road, Gendros, Swansea, located circa 10 miles from the subject property, was purpose built in 1999 and measured 274.71m² (GIA). It was let in March 2004 for a term of 35 years at an initial rent of £77,375 p.a. with five yearly upwards only rent reviews to open market value. The March 2009 rent was settled at £78,600 and the March 2014 rent review at £80,500p.a. which devalued to £322.34/m² when adopting a 10% fit out. The VO stated that this reflected growth of 3.07% between the March 2009-March 2014.
48. Burger King, Heron Way, Morriston, Swansea, located approximately eight miles from the appeal property, was purpose-built property constructed in 2001 and the accommodation measured to 260.40m² (GIA). It was let for a 25-year term commencing September 2000 at an initial rate of £75,000 p.a., subsequent rent reviews have resulted in nil increases. Visibility of evidence utilised within the rent review was requested to establish whether the property was under/over or rack rented at the rent review but had not been provided. Since this was a fitted rent, no allowance for fit out was required, thus the rent of £75,000 p.a. equated to £288.02/m². An appeal against the RV ascribed was provisionally settled at £288.50/m² – a nil increase on the 2010 Rating List rate. The VO noted that Mr Symonds considered that the property was over rented however, Mr Preston considered that this was conjecture and speculation.
49. KFC, Heron Way, Moriston, Swansea, located circa eight miles northwest of the subject property was constructed in 2001 and measured 293.36m² in total 282.89 (GIA) over two floors. In November 2020 an appeal was agreed at £288.50/m² which represented a nil increase on the 2010 Rating list value, based upon comparable evidence from the aforementioned Burger King located adjacent to this property.
50. KFC Restaurant, By-Pass Road, Bridgend, this property was purpose built in 1999 and located approximately 15 miles southeast of the subject property. The accommodation over two floors extended to 267.17m² in total and 259.09m² ITMS (GIA). It was let for 25 years in June 1999 with five yearly OMV rent reviews. The June 2009 rent review was settled at £64,100 p.a. and the June 2014 rent review was settled at £66,300 p.a. which devalued to £272.14/m² and £281.49/m² respectively with fit at 10%. The rent review in June 2014 reflected an increase equivalent to 3.43% or 0.69% p.a. An appeal was agreed at a rate of £283.50/m².
51. KFC, Welsh Designer Outlet, The Derwen, Bridgend, located some 15 miles southeast to the appeal property, this purpose-built drive-thru was constructed in 2010 and measured

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241.40/m² (GIA). It was let for a term of 20 years in April 2012 at an initial rent of £73,528 p.a. which devalued to £335.05/m². A rent review in April 2017 was agreed at £78,780 £358.98/m², reflecting growth of 7.14%. An appeal against the 2017 entry of £84,500 RV (adopted rate of £345/m²) was withdrawn by the Agent in May 2020.

52. The VO believed that location is the key comparative element to be considered and he had endeavoured to source rental evidence as close to the appeal property as possible. However, as many drive-thru restaurants are held freehold or on a long leasehold basis there can often be a dearth of relevant and appropriate comparable evidence within the immediate locality, therefore the search radius to source relevant comparable evidence needed to be expanded. He added that this practice is generally accepted with national classes.

53. In response to questions, Mr Preston stated:

- He did not consider that retail warehouse type properties were directly comparable to drive-thru properties as they operate in different markets;
- He did not dispute that internet shopping may have had an effect on customers visiting retail parks. However, people visit some drive-thru restaurants as a destination;
- The McDonald's (former Burgermaster) in Pensarn, Carmarthen was inspected by the VOA in October 1997. He was unable to clarify the details with an agent and had not seen the lease. However, as a new franchise had taken over a fit out would have been required;
- In relation to the Burger King drive-thru on Princess Margaret Way, Port Talbot as supplied in the Agent's case, the VO considered that this property was clearly under assessed;
- The VOA either inspects properties or relies on BAR and then re-assesses the assessment. Mr Preston stated that he had intended to inspect all the properties where there appeared to be some factual inaccuracies, but he had been unable to. However, he considered that there was enough evidence to calculate the unit rate by utilising the general tone of drive-thru restaurants;
- Drive-thru and drive-to restaurants are approached differently as drive-thru restaurants have the added benefit of either dining in or using the drive-thru so are more valuable.

54. The VO considered that the above comparables comprised of rental, settlement, and withdrawal evidence for purpose-built drive-thru accommodation in South Wales. He explained that location is a key comparative element to be considered and he had endeavoured to source rental evidence as close to the subject property as possible.

55. He added that the evidence reflected analysed rental values of between £266.50-£410/m² and whilst he had had to make some assumptions surrounding rent free periods, this is considered a fair and reasonable way to analyse rents where information is missing. Consequently, Mr Preston considered that the adopted rate of £280/m² was excessive and requested that the Tribunal allow the appeal in part and confirm a revised unit rate of £270/m² £64,500 RV effective from the 1 April 2017.

56. At the conclusion of the hearing, the Tribunal decided to reserve its decision.

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Reasons for Decision

57. Having considered all the evidence placed before it, the Tribunal was persuaded by the Valuation Officer and decided to allow the appeal in part.
58. In arriving at the decision, the Tribunal was aware that in accordance with the basis of valuation, as contained in Schedule 6 of the Local Government Finance Act 1988, as amended by Section 1(2) of the Rating (Valuation) Act 1999, it must assume that the subject property was “vacant and to let”; in a reasonable state of repair and cannot have regard to the actual trade of the occupier.
59. Statute further requires that the appeal hereditament must be valued by reference to rental values being achieved as at the Antecedent Valuation Date, whilst having regard to the physical state and its physical settings as at the Material Day.
60. Accordingly, in respect of the subject appeal, the rental value of the appeal hereditament was required to be assessed at rental levels that were in existence at the 1 April 2015, whilst having regard to the physical circumstances that affected the subject property as at the 1 April 2017, the compilation date of the 2017 Rating List.
61. The Agent considered that the Rateable Value applied to appeal property was excessive and requested that the rate of £280/m² be reduced to £240/m² which resulted in an overall Rateable Value of £57,500, the same value ascribed to that property in the 2010 Rating List.
62. In support of his contention, Mr Symonds referred to several other drive-thru restaurants located on retail parks and non-retail parks and drew comparisons to the Rateable Values ascribed to these and other classification properties situated on those sites. He considered that where background retail values had risen, likewise the rents on the drive-thru restaurants had also risen. Additionally, Mr Symonds also referred to the economic background of Port Talbot between 2014-2016.
63. The Tribunal considered the evidence provided by both parties and weighted it in accordance with *Lotus & Delta v Culverwell (VO) and Leicester City Council (1976)*. It was noted that the appeal property was owner occupied so there was no rent passing therefore the Members turned their attention to the drive-thru properties as supplied by the Valuation Officer, which they considered to be the most useful directly comparable evidence since they are of the same classification with its own evidence base.
64. The Members were disappointed that there appeared to be some size inaccuracies in relation to several McDonald’s drive-thru restaurants, therefore where the Tribunal had been informed by the Agent that there could be a factual inaccuracy the Members disregarded that property particularly as the VO had been unable to inspect those properties to ascertain the correct measurements.
65. The Members considered the rental evidence which occurred on or around the AVD. A rent review conducted in May 2015 on KFC Park Trostre, Llanelli was agreed at £89,900 adjusted to £98,890 which analysed to £359.21 with an adopted rate of £300/m².
66. Burger King, Heron Way, Morriston is located only eight miles from the appeal property. This property was let for a term of 25 years in September 2000 at an initial rent of £75,000 and has

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had nil rent increases ever since. The Agent considered that this meant that the property was over rented therefore the Tribunal exercised caution in relation to this property. An appeal made by an agent was verbally agreed subject to client approval at £288.50/m². The Tribunal noted that an appeal submitted by Mr Symonds in relation to KFC located adjacent to the aforementioned Burger King was subject to an appeal and was agreed at £288.50/m².

67. A form of return informed the Valuation Officer that Burger King, Princess Margaret Way, Port Talbot was let for a term of 20 years commencing in December 2015 subject to 10 yearly rent reviews. A deed of variation dated the 1 August 2018 was understood to be in place with a new lessee following the previous lessee going into liquidation. The passing rent of £50,000 p.a. was agreed on the 1 August 2018 and was outlined as being agreed on some other basis and not based on open market value. The Valuation Officer stated that the rent devalued to £171.49/m² with fit out at 10%. This property was assessed by the Valuation Office at £130/m² albeit Mr Preston considered that it was clearly out of line with the national and regional tone.
68. The Tribunal noted that the adopted value unit rate on those properties cited as comparable by the Valuation Officer varied from either a verbally agreed £266.50/m² or assessed at £275/m² to £345/m², therefore little weight was attached to the Burger King at Princess Margaret Way, Port Talbot as it was clearly out of kilter to other similar properties in/around the area.
69. In relation to the Agent's contention that there was no evidence to show a rise in values between the 2010 and 2017 Rating Lists, the Members are aware that the AVD for the 2010 Rating List is the 1 April 2008 and the 1 April 2015 for the 2017 Rating List. The Valuation Officer provided market commentary research undertaken by several reputable firms stating that the food-to-go sector as a whole had grown with a number of less traditional drive-thru retailers entering the market and likely to continue to grow. In addition, the Tribunal agreed with the Valuation Officer from the rental information he had supplied, that the market had generally grown between the two lists.
70. The Members were aware that the burden of proof falls to the Appellant to prove his case and in this instance without any evidence to persuade them otherwise, they concurred with the Valuation Officer's revised valuation and consequently, the appeal was allowed, in part.
- 71. The Tribunal Ordered that the entry in the 2017 Rating List for Kentucky Fried Chicken, Baglan Retail Park, Afan Way, Port Talbot SA12 6NR should be altered to £64,500 RV with effect from 1 April 2017.**

Certified a true copy on 26 February 2021.