

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appeal No.: 682530641684/541NV17/20

Appellant: Brown & Merry Commercial agent for Demipower 2017 Ltd

Appellant's Address: Kentucky Fried Chicken (KFC), Myrtle Hill, Carmarthen SA31 2NG

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 Dismissed

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 £77,000 RV was incorrect, excessive, and wrong in law and should be reduced to £1 RV with effect from the 1 April 2017.
2. 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

3. 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 within Wales, he submitted appeals against 17 assessments, whereas he only submitted 4 appeals against some 80 restaurants in England.
4. Prior to presenting his case, the Agent referred the Members to the VO's submission and raised concerns regarding incorrect size information held on several properties which he opined could 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 and where inaccuracies are brought to the VO's attention investigations should be undertaken.

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5. 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 is 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%			
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%			

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6. He then referred to the summary of VO's evidence relating 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, Cwmdu 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 McDonalds 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

7. The Agent then turned his attention to the floor area of the McDonald's also sited at Myrtle Hill, Carmarthen, which since the VO's last inspection in October 1997 had been extended several times and in support, he provided planning history.
8. Mr Symonds explained that the VO had emailed him on the 8 November 2020 advising that he had traced a rent on the aforementioned McDonald's for £111,312 payable on a 20-year lease from the 4 September 2018 and that it would be referred to during the hearing. The Agent stated that the VO had analysed the rent at £316.59/m² by assuming a 10% addition for fit out and he presumed that his approximate analysis was based on the current VO records which show 430.12m² and an area in terms of main space (ITMS) of 388.72m² as follows:
- i.e. £111,312 p.a. divided by 388.72m² ITMS =£286.35/m² +10% (fit out) = £315/m² ITMS
9. However, Mr Symonds believed that this was entirely incorrect as the VO's last inspection there had been no less than 11 planning applications on that site including three for extensions in 1998, 2011 and 2015. He considered that the property was 13.7% larger than the VO records show and drew Mr Preston's attention to the inaccuracy via emails sent in April 2020. Mr Symonds stated that Mr Preston acknowledged the presence of the 15.8m² extension in his reply. The Agent also referred the VO to the addition of air conditioning units as shown on the plans. In addition, Mr Symonds considered that if the property was let in 2018, it was already a fully fitted property so there was no requirement for the addition of fit out.

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10. The Agent believed that the correct analysis of the rent assuming the area ITMS was 13.7% larger than the VO realised was:

- £111,312 p.a. divide by $(388.72\text{m}^2 \times 1.137 = 441.97\text{m}^2) = £251.85/\text{m}^2$ ITMS

11. He added that an alternative analysis of the rent on an overall basis would be:

- VO - £111,312 p.a. divided by $430.12/\text{m}^2 + 10\% = £284.67/\text{m}^2$ overall
- Agent - £111,312 divided by $489.36/\text{m}^2 = £227.46/\text{m}^2$ overall

12. The Agent explained that the use of inaccurate floor areas and fit out information has a huge impact on the outcome of any analysis. He considered that it was unacceptable that the VO had continued to use inaccurate information when he had been advised of discrepancies and the true analysis would show:

- On an overall basis - £227.46/m²
- On an ITMS basis the Main Space (i.e. the restaurant) - £251.85/m²

13. In addition, Mr Symonds stated that McDonald's was originally assessed in the 2017 Rating List at £112,000 RV but this was reduced by the VO to £106,000 RV (£275/m²) despite it being known that there were significant discrepancies in the floor area.

14. Further, referring to an aerial photograph showing the retail park, the Agent stated that all traffic entering the site passes McDonald's so the property benefits from a more advantageous position and a dual feed drive-thru system.

15. The Agent referred the Tribunal to the changes in Rateable Value between the 2010 and 2017 Rating Lists of retail properties located adjacent to KFC on Myrtle Hill, Carmarthen. He stated that overall values at the back of the site had fallen overall by 21.88%

	<u>2010</u>	<u>2017</u>	<u>% change</u>
Kentucky Fried Chicken	£73,000	£77,000	Up 5.4%
Farmfoods	£98,500	£82,500	Down 16.3%
Dunelm	£270,000	£200,000	Down 26%
Subway	£19,500 £175/m ²	£21,250 £190/m ²	Up 8.9%
Domino's Pizza	£19,750 £175/m ²	£14,750 £130/m ²	Down 25.3%

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16. Mr Symonds informed the Tribunal of other agreed or accepted rating valuations on other KFC's and Burger King restaurants within South Wales:

<u>Address</u>	<u>RV</u>	<u>Basic Price/m²</u>	<u>Remarks</u>
KFC Morriston Swansea SA6 8PS	£81,500 Agreed	£288.50	Built in 2001. Declining retail park location. Based on rental evidence from Burger King adj.
KFC Waterfront, Barry CF63 4BA	£68,500 Accepted	£290	Built 2004. Declining retail park. No appeal for Demipower Ltd. Rent 2014 £63,000 p.a.
KFC Pontypool NP4 0XB	£70,000 Agreed	£290	Built 2008. Roadside location. Based on 2013 Rent £63,760 p.a.
KFC By Pass Rd Bridgend CF31 3LJ	£73,000 Agreed	£282	Built 1999. Roadside location. Based on 2014 rent £66,300 p.a.
Burger King Park Trostre, Llanelli SA14 9UY	£61,500 From 18/3/19	£300	Built 2019. Improving popular retail park location. No appeal made so far as I am aware.

17. In response to questions, Mr Symonds stated:

- Whilst he appreciated that McDonald's on Myrtle Hill, Carmarthen could be under assessed, he maintained that there are many McDonald's properties which are bigger and as such are under assessed;
- A nil increase on Burger King, Morriston fits in with the pattern of a declining retail site due to a decline in footfall;
- He was not aware of the exact mileage from the appeal property to KFC in Pontypool;
- He did not need to provide any rental evidence as all the answers were within the rental evidence supplied by the VO; and
- The VO has a statutory duty to maintain the Rating List and correct any inaccuracies brought to his attention. The VO had ample time to inspect.

18. Concluding his case, Mr Symonds stated that no rental growth was apparent in any of the VO's evidence on retail parks where background values had fallen. Agreed or accepted assessments on KFC's in similar locations on retail parks with falling values depicted £288.50/m² to £290/m² for properties built in 2001 and 2004 respectively. Agreed valuations on KFC's in roadside locations based on rental evidence devalued to £282/m² to £290/m² for units built in 1999 and 2008 respectively. The basic rate must be lower than the £300/m² applied to the new 2019 Burger King on an improving retail park in Llanelli. Direct rental evidence on the nearby McDonald's devalued to a main space rate of £251.85/m² for an older larger drive-thru in a better location. Consequently, Mr Symonds requested that the Tribunal reduce KFC, Myrtle Hill, Carmarthen to £72,000 RV based on a unit rate of £295/m² with effect from the 1 April 2017 and allow the appeal in part.

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Summary of the VO's case

19. Mr Preston outlined the general history of the hereditament. He stated that the hereditament was initially entered into the 2010 Rating List on the 8 October 2012 and assessed at a rate of £300/m². A VOR was raised to alter the 2010 Rating List assessment by correcting the value applied to the pod element which resulted in a reduction from £73,500 RV to £73,000 RV.
20. 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 assessed at a rate of £315/m² and £90/m² for the pod element resulting in £77,000 RV. He added that the valuation before the Tribunal was produced in accordance with Paragraph 2(1) Schedule 6 of the Local Government Finance Act 1988 and the Rating Lists (Valuation Date) (Wales) Order 2014.
21. 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.
22. Furthermore, he briefly outlined the cases of Lotus & Delta v Culverwell (VO) and Leicester City Council (1976), O'Brien v Harwood (2003), Ladies Hosiery and Underwear Ltd v Middlesex Assessment Committee (1932) and Urban and Civic v M J Dunlevey (VO) (2013).
23. 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 chiller unit pods have 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.
24. Mr Preston explained that the appeal hereditament occupied a position on a small retail park situated to the south of Carmarthen. Other occupiers of the site included Domino's, Dunelm, McDonald's (former Burgermaster), Subway and Wyevale Garden Centre. The site is situated to the west of the A484 which connects to the A40 and A48.
25. The subject property comprised of a detached drive-thru restaurant and premises, constructed in 2012 and measured 241.11m² (GIA). The pod element measured 12.88m². The accommodation comprised of a modern purpose-built single storey modular drive-thru restaurant unit with some 60 seat covers internally and 30 car parking spaces. The property is subject to a leasehold interest for a term of 999 years commencing the 11 June 2012 at a ground rent of a peppercorn. The premises are owner occupied.
26. The VO informed the Tribunal that Mr Symonds made an initial proposal of £290/m² £71,000 RV in an email dated the 16 April 2020 which reflected a reduction of -3.33% on the accepted level in respect of the 2010 Rating List appeal. He added that the Agent's opinion of value was derived from the McDonald's drive-thru premises situated on the same retail park.
27. 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

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warehouse accommodation in comparison to drive-thru property was 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.

28. 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.
29. 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 several less traditional drive-thru retailers entering the market. In addition, the ability of drive-thru restaurants to accommodate social distancing during the covid-19 pandemic market looks set to continue to expand.
30. Mr Preston turned his attention to evidence of the other drive-thru restaurants within the area.
31. McDonald's, Pensarn, Carmarthen, located circa 240m southeast of the appeal property was a former Burgermaster property constructed in 1987. The accommodation extended to 430.12m² and provided 388.72m² ITMS on a GIA basis. This comparable formed the basis of a proposal and the unit rate of £290/m² was reduced via a VOR to £275/m². This rate was applied as a consequence of pre-agreement work undertaken with McDonald's in respect of values in relation to the 2021 Rating List.
32. The McDonald's was also subject to a proposal against the entry shown in the 2010 Rating List which was settled at a unit rate of £255/m², a differential of £45.00/m² between the appeal property and this property in respect of the 2010 List.
33. The VO conducted further investigations into this McDonald's via stamp duty land transaction which indicated that the property was held on a 20-year lease commencing 4 September 2018 with a passing rent of £111,312 p.a. which adjusted to £122,443 p.a. when adopting 10% for fit out. The adjusted rent analysed to £316.59/m² which did not include a rent-free period. However, when a 12-month rent free period was adopted, nine months into the analysis the rent devalued to £285.35/m² with fit out at 10%.
34. Mr Preston reiterated that this McDonald's was 25 years older in comparison to the appeal property and referred the Tribunal to the RICS Professional Standards and Guidance Note Comparable Evidence in Real Estate Valuation which outlines the key comparative elements to be considered when analysing comparable evidence. He had attempted to verify the size of the property, but he had been unable to inspect or clarify any details with the VO caseworker. The VO could not rule out that the rent was agreed between connected parties, but he included it within his submission for transparency.
35. KFC Park Trostre. Llanelli, located on the Trostre Retail Park some 16 miles to the southeast 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 £89,000 p.a., which after adopting 10% fit out,

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equated to £359.21/m². Mr Preston explained that the rent reflected growth of 11.71% from May 2010 to May 2015.

36. KFC Unit 17a Morfa Shopping Park, Brunel Way, Pentrechwyth, Swansea, located approximately 27 miles southeast 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 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 review or 1.20% p.a.
37. 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 27 miles southeast to 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 £371.36/m² when adopting a 10% fit out.
38. McDonald's, Cwmdau Industrial Estate, Carmarthen Road, Gendros, Swansea, located circa 25 miles southeast 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 £78,100 p.a. and the March 2014 rent was settled at £80,500 p.a. The March 2014 rent review devalued to £293.04 and £322.34 when adopting fit out at 10%, Mr Preston stated that this reflected growth of 3.07% between March 2009-March 2014.
39. Burger King, Heron Way, Morriston, Swansea, located approximately 27 miles from the appeal property, was purpose built in 2001 and the accommodation measured 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 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.
40. KFC, Heron Way, Morriston, Swansea, located circa 27 miles southeast of the subject property was constructed in 2001 and measured 293.36m² in total, 282.89 ITMS (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.
41. KFC Restaurant, By-Pass Road, Bridgend, was purpose built in 1999 and located approximately 47 miles southeast of the subject property. The accommodation over two floors extended to 267.17m², 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

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2014 rent review was settled at £66,300 p.a. which devalued to £272.14/m² and £281.49/m² respectively with fit out at 10%. The rent review in June 2014 reflected an increase equivalent to 3.43% or 0.69% p.a. An appeal was agreed with the Agent at a rate of £283.50/m².

42. KFC, Welsh Designer Outlet, The Derwen, Bridgend, located some 47 miles southeast to the appeal property, a purpose-built drive-thru restaurant was built in 2010 and measured 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 including fit out. A rent review in April 2017 was agreed at £358.98/m² including fit out, reflecting growth of 7.14%. An appeal against the 2017 entry of unit rate of £345/m² £84,500 RV was withdrawn by the Agent in May 2020.

43. Burger King, Vale of Neath Retail Park, Cadoxton Road, Neath, occupied a position on a standalone site some 32 miles southeast 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 assumed a fitted rent so no addition for fit out was required. 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 £279.98/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. 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.

45. 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 consequently, he disregarded the information which the Agent had supplied in relation to this type of property.
- A McDonald's drive-thru constructed in 2019 currently assessed at £325/m² was likely to be under assessed.
- The unit rates agreed were based on rental evidence and he gave the example of an appeal in relation to KFC in Morriston which was agreed based on evidence supplied in connection with an appeal agreed on the adjacently situated Burger King.
- The more internal seating for a restaurant, the greater potential there was for a higher turnover; and
- The KFC drive-thru located on By-Pass Road, Bridgend, is an older property. The rent increased between June 2009 and June 2014. He asked the Agent for details of the 2019 rent but he refused.

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

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47. 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 was considered a fair and reasonable way to analyse rents where information was missing. Consequently, Mr Preston considered that the adopted rate of £315/m² £77,000 RV effective from 1 April 2017 was fair and reasonable and requested that the Tribunal dismiss the appeal.
48. At the conclusion of the hearing, the Tribunal decided to reserve its decision.

Reasons for Decision

49. Having considered all the evidence placed before it, the Tribunal was persuaded by the Valuation Officer and dismissed the appeal.
50. 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.
51. 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.
52. 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.
53. The Agent considered that the Rateable Value applied to appeal property was excessive and requested that the rate of £315/m² be reduced to £295/m² resulting in a reduction in Rateable Value from £77,000 to £72,000 with effect from the 1 April 2017.
54. 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 decreased, likewise the rents on the drive-thru restaurants had also fallen.
55. 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 held on a long leasehold basis for a term of 999 years commencing the 11 June 2012 at a ground rent of a peppercorn and was owner occupied. Consequently, since there was no rent passing on the appeal property, the Members turned their attention to the only rental evidence of drive-thru properties supplied by the Valuation Officer, which they considered to be the most useful directly comparable evidence since the properties supplied were all of the same classification as the appeal property.
56. 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

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to £345/m². However, the Members were persuaded by rental evidence which occurred closest to the AVD. Rent reviews conducted on two KFC drive-thru restaurants in Park Trostre, Llanelli and Morfa Shopping Park, Pentrechwyth in May 2015 and February 2015 respectively were agreed at £89,900, adjusted to £98,890 analysed to £359.21 with an adopted rate of £300/m² and £77,250 adjusted to £81,885 analysed to £320.32/m² with an adopted rate of £325.00/m². These restaurants were older than the appeal property having been constructed in 2004 and 2005.

57. Whilst the Tribunal appreciated the Agent's grievance regarding the McDonald's located on the same site as the appeal property with possible size inaccuracies, the Members expressed their disappointment that the VO had been unable to inspect this property as soon as the issue had been brought to his attention. Consequently, they hoped an inspection would be conducted as soon as possible and if required, the VO would correct any inaccuracies in accordance with the statutory duty to compile and maintain rating lists.
58. 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 which was likely to continue to grow. In addition, when the Members considered the basket of rents it did appear to them that there had been growth in the drive-thru market in all but one of the properties.
59. 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 valuation and therefore dismissed the appeal.

Certified a true copy on 26 February 2021