

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

Appellant: Ameliorate Consultancy Ltd agent for The Magic Bean Company Ltd

Appeal Property: Starbucks, Culverhouse Cross, Cardiff CF5 6XW

Appeal number: 695036288643/537NV17/2

The Matter Appealed Against: 2017 Rating List

Date of Hearing: Monday 26th June 2023

Appearances: Mr S Price (for the appellant) & Mr C Preston (for the respondent Valuation Officer)

Date of Decision: 24th July 2023

Decision of Tribunal: Appeal allowed

Members of the Tribunal: Mr JK Lewis (Chairperson) & Mrs C Green & Mr G Sullivan

Tribunal Clerk: Mr G Harris

Introduction

1. The appeal before the tribunal followed a proposal made by Ameliorate Consultancy Ltd on behalf of the occupier, The Magic Bean Company, in respect of Starbucks, Culverhouse Cross, Cardiff CF5 6XW. The proposal sought that the entry in the 2017 Rating List be reduced to £50,000 with effect from 30th July 2020.
2. The appeal property comprised a modern purpose-built drive-thru occupied by The Magic Bean Company Ltd, trading as Starbucks. The building was built in 2020 of steel portal frame construction on former carparking spaces on the existing Brooklands Retail Park. The hereditament had composite panelled, glazed and wooden elevations beneath a pitched profiled sheet lined roof. It was fitted out in the corporate manner of a Starbucks unit with tiled/vinyl flooring, plastered and panelled elevations beneath a mixture of suspended tiled ceiling or exposed roof space and was air conditioned. It had an agreed Gross Internal Area (GIA) of 169.26m².
3. The parties provided the tribunal with relevant Legislation and Case Law, schedules of rental and tonal evidence, photographs of the hereditament and of comparable properties, location plans, maps and various leases. It was agreed that the matter for consideration by the tribunal was the base value to be adopted, £/m², and subsequent rateable value (RV). The current RV was £57,500 based on £340/m². The material and effective dates were 30th July 2020.

4. The valuation under consideration had been produced in accordance with Paragraph 2(1) Schedule 6 of the Local Government Finance Act 1988 which stated –

2(1) The rateable value of a non-domestic hereditament [none of which consists of domestic property and none of which is exempt from non-domestic rating] shall be taken to be an amount equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year on these three assumptions-

- (a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;*
- (b) the second assumption is that immediately before the tenancy begins the hereditament is in a state of reasonable repair, but excluding from this assumption any repairs which a reasonable landlord would consider uneconomic;*
- (c) the third assumption is that the tenant undertakes to pay all usual tenant's rates and taxes and to bear the cost of the repairs and insurance and the other expenses (if any) necessary to maintain the hereditament in a state to command the rent mentioned above.*

5. Schedule 6 also provided for the Antecedent Valuation Date (AVD), the date by reference to which the rateable value of the hereditament was to be determined, this was 1st April 2015 for the 2017 Rating List.
6. 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.

Parties' submissions & decision

7. Mr Price believed the current Rating List assessment of £57,500 was excessive and incorrect, he did not accept the current basis of valuation of £340/m² as it did not reflect the appropriate rental value at the AVD. He contended that the hereditament should be correctly valued as a Drive Thru Café and Premises and the RV reduced to £48,250 with effect from 30th July 2020, based on a value of £285/m².
8. The current lease had been agreed on 27th March 2020 for a term of 15 years on full repairing and insuring terms at £83,200 per annum, with 5 yearly rent reviews. As the rent had been agreed 5 years post AVD Mr Price placed little weight on it, instead referring to a schedule of rental and tonal evidence to support his contentions, in line with propositions set out under Lotus and Delta v Culverwell (VO) & Leicester City Council (1976).
9. Mr Price explained that he had sought to categorise the comparables into two types-
- Prime – Drive Thru properties located with prominence to main arterial roads and situated as part of developments with large scale

mass of other retail and leisure/hospitality uses, or those located adjacent to a motorway junction.

- Secondary – Drive Thru properties that form part of smaller scale retail/leisure/hospitality schemes, which are close to main arterial roads but have limited prominence to the main arterial road or are solus sites close to residential/mixed use areas.

It was his opinion that the subject hereditament was of secondary quality. It did not have prominence to a main arterial road and was located on Brooklands Retail Park which had 6 retail units and at the material day a vacant former Pizza Hut unit.

10. Mr Price contended the most relevant rental evidence was that of Starbucks, Royal London Park, Waterton Industrial Estate, Bridgend as the rent had been agreed close to the AVD, it was what he considered to be a secondary quality property located on a similar scale mixed use scheme, the rent analysed at £273/m². The rental evidence for other similar properties ranged between £273/m² and £312/m² between June and October 2015, hence he considered the appropriate range of value to be adopted, based on the rental evidence at the AVD to be between £270/m² and £300/m².
11. Referring to the 'tone of the list' Mr Price presented a schedule of evidence highlighting the tone of values ranging between £285/m² and £345/m² for those properties he believed to be classed as prime, and between £270/m² and £300/m² for those he classed as secondary.
12. In light of the relevant comparable rental and tone of the list evidence, Mr Price concluded that the correct value was, in his view, £285/m² and therefore requested that the Tribunal determine a RV of £48,250 with effect from 30th July 2020.
13. Mr Preston referred to the Legislation and Case Law pertinent to the appeal, in particular the hierarchy of evidence set out under *Lotus and Delta v Culverwell (VO) & Leicester City Council (1976)*, and *O'Brien v Harwood (VO) RA-22-2002* and *K Shoe Shops Ltd v Hardy (VO)* and *Westminster City Council (1983)* which discussed the 'tone of the list'.
14. Mr Preston explained that the initial rent devalued to £540.17/m² compared to the assessment of £340/m². Hypothetically adopting a lower base rate, as contended for by the appellant, would result in the assertion of an even higher level of rental growth being demonstrated. A realistic and evidenced level of rental growth must therefore also be considered. Nevertheless, in line with established case law, the subject rent comprised the starting point.
15. To support his valuation Mr Preston also referred to a schedule of comparable rents across South Wales, noting that drive-thrus comprised a national class of hereditaments, with at times, a general dearth of appropriate and relevant comparable evidence within the immediate locality. It was therefore necessary as required, in line with pertinent RICS

guidance, to expand the search radius to source relevant comparable evidence.

16. Referring to his schedule of comparables, Mr Preston described them as being open market lettings based on open market rental value and agreed between November 2014 and March 2016. Adjusted and devalued over 10 years, the rentals reflected fitted rents of between £296.07 and £548.21/m², and over the entire lease terms between £304.73 and £551.16/m². The 2 comparables closest to the subject property reflected devalued rates of £430.62 and £548.16/m². The evidence, including settlement evidence, reflected adopted rates of between £270 and £345/m², with the appeal property falling within this range.
17. In conclusion Mr Preston stated that on balance and after consideration of the subject rent and comparable rental evidence, he was of the opinion that the existing base rate of £340/m² and a RV of £57,500 was fair and reasonable.
18. The Tribunal, after considering all the evidence decided that, although a useful starting point, the subject property rent was too far removed from the AVD to provide a reliable indicator of the rental value hence placed little weight upon it. Instead, the tribunal sought to look at rental values pertaining to similar assessments, located on similar developments, agreed closer to the AVD.
19. The Tribunal noted Mr Price had provided evidence which supported his valuation, in particular his comparable assessments and tonal evidence. The Tribunal did not agree with Mr Preston's assertion that the search for comparable assessments had to be expanded across South Wales believing the rental evidence pertaining to assessments in the same locality to be of greater weight. Therefore, the Tribunal placed less weight on the Bridgend and Swansea assessments provided by the parties in their evidence due to their distance from the subject property and placed more weight on comparable sized assessments located on similar developments and locations.
20. The Tribunal considered the assessments located at Dunlevy Drive, Cardiff, valued at 275/m², and Unit 6, City Link, Newport Road to be direct comparables, noting the appeal relating to the later had been withdrawn with a value of £300/m². The tribunal believed the assessment at 376 Newport Road, Cardiff to be in a superior location and of lesser weight.
21. Based on this evidence, the Tribunal considered a value of £285/m² to be in line with comparable assessments on similar developments and fell within Mr Preston's range of assessment and withdrawal evidence. As such the tribunal allowed the appeal and orders the Valuation Officer to amend the Rating List to reflect the revised RV of £48,250 with effect from 30th July 2020.