

TRIBIWNLYS PRISIO CYMRU - VALUATION TRIBUNAL FOR WALES

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

Appeal Property: Unit 1, Newport West Food Park, Port Road, Newport NP20 2SA

Appeal number: 693536286780/537NV17/36

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 dismissed

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 Unit 1, Newport West Food Park, Port Road, Newport NP20 2SA. The proposal sought that the entry in the 2017 Rating List be reduced to £50,000 with effect from 3rd December 2021.
2. The appeal property comprised a modern purpose-built drive-thru occupied by The Magic Bean Company Ltd, trading as Starbucks, located towards the rear of Newport West Food Park, which provides three drive thru restaurant premises. Situated on the other side of Docks Road was 28 East Retail Park, a large-scale retail warehouse development with 11 retail warehouses and a KFC drive thru.
3. The subject property was built in 2021 of steel portal frame construction beneath a flat profiled sheet lined roof and external elevations incorporating profile panels and timber cladding. It was fitted out in the corporate manner of a Starbucks unit with tiled/vinyl flooring, plastered and clean 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 167m².
4. 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 £62,500 based on £375/m². The material and effective dates were 3rd December 2021.

5. 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.*

6. 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.
7. 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

8. Mr Price believed the current Rating List assessment of £62,500 was excessive and incorrect, he did not accept the current basis of valuation of £375/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 £49,250 with effect from 3rd December 2021 based on a value of £295/m².
9. The current lease had been agreed on 1st November 2021 for a term of 15 years on full repairing and insuring terms at £78,658.80 per annum, with 5 yearly upwards only rent reviews. As the rent had been agreed 6.5 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)*.

10. 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 good secondary quality. It did not have prominence to a main arterial road but was located on Port Road which fronted onto Docks Road where 28 East Retail Park was located, consisting of 11 retail warehouses and a KFC drive thru.

11. 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 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.
12. 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. Mr Price considered the KFC drive thru opposite the subject hereditament to be highly comparable even allowing for the size differential, KFC being 271.18m², the agreed assessment was 293/m², making the appeal assessment look markedly excessive.
13. In light of the relevant comparable rental and tone of the list evidence, Mr Price concluded that the correct value was, in his view, £295/m² and therefore requested that the Tribunal determine a RV of £49,250 with effect from 3rd December 2021.
14. 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'.
15. Mr Preston explained that the initial rent devalued to £474.92/m² compared to the assessment of £375/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.

16. 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.
17. 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 November 2021. Adjusted and devalued over 10 years, the rentals reflected fitted rents of between £297.06 and £548.21/m², and over the entire lease terms between £304.73 and £551.16/m².
18. The two rental comparables agreed in Newport between September and November 2021 reflected devalued rents of £473.34/m² and £496.77/m² for the drive thru located opposite the subject property. The evidence, including withdrawal evidence, reflected adopted rates of between £270 and £375/m², with the appeal property falling within this range.
19. Mr Preston stated there were three drive thru comparables occupied by coffee operators within five miles of the subject property, all had been assessed at £375/m² and not appealed.
20. 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 £375/m² and RV £62,500 was not excessive.
21. 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 and located on similar developments.
22. The Tribunal placed little weight on the KFC assessment provided by Mr Price in his evidence as it was some 126m² larger than the appeal property and not truly comparable. The Tribunal considered the assessments located within five miles of the assessment to carry more weight, supporting the tone of the list. Based on this evidence the Tribunal considered a value of £375/m² to be in line with other assessments on similar developments in the locality and fell within Mr Preston's range of assessment and withdrawal evidence. As such the tribunal dismissed the appeal.