

THE HIGHLAND & WESTERN ISLES
VALUATION APPEAL COMMITTEE

INVERNESS, 6 AUGUST 2019

Subjects	Reference Number
Poundstretcher Limited, Macleay Lane, Wick, Caithness	01/05/536006/2
Appellant	
Poundstretcher Limited	
For the Appellant	For the Respondent
Ken McCormack MRICS Montagu Evans, Surveyors, Glasgow	Robert Shepherd, Assistant Assessor & Geoff Clarke QC

INTRODUCTION

The subjects of Appeal comprise a single storey, standalone shop close to the town centre of Wick. It was built as a supermarket. It is owned by BNP Paribas Securities Services Trust Company (Jersey) Limited (“BNP”). They lease it to Co-operative Group Limited (“the Co-op”). The Head Lease was struck in 2009 at an initial rental of £110,000. A copy of that Lease was not lodged with the Committee but the parties to this Appeal understood the Head Lease was subject to an annual rent review with the rent increasing according to RPI. The rent currently passing under the Head Lease is £147,000. According to a back calculation by the Assessor that would have equated to an annual rent of the order of £130,000 at the time date for the present revaluation.

The Appellants took on a Sub Lease of the subjects from the Co-op for a ten year term from 17th September 2012. The annual rent paid by the Appellant is £56,000 with an initial rent free period of fifteen months. The Appellants had the right to terminate the Sub Lease early after five years on 17th September 2017 on six month notice. They did not exercise that right. The rent of the Appeal subjects was reviewed in 2017. The review resulted in a nil uplift in the rent.

The user clause in the Lease allows the premises to be used as a variety and hardware store for the retail sale of goods including, but not limited to, household goods and equipment and food and non-alcoholic drinks, or for any other use falling within Class 1 of the Schedule to the Town and Country Planning (Use Classes) (Scotland) Order 1997, and for no other purpose whatsoever unless with the consent in writing of the Head Landlord to the extent required, and in the terms and subject to the provisos contained in the Head Lease. In practice, the Appellants sell mainly non-perishable food items and household consumable goods from the subjects. There is no refrigerated selling space in the subjects.

The subjects do not have their own dedicated customer parking area. Customers instead use a nearby public car park.

The gross internal area of the subjects was agreed at Appeal to be 1,417.65 m². The Appellants contended for a rate of £35 per m² to be applied to that area resulting in a rateable value of £49,618, rounded to £49,500 with effect from 1st April 2017.

The Assessor defended a rate of £90 per m² resulting in a rateable value of £127,588 rounded to £127,000 (this was £2,000 less than the rateable value published in the Roll).

Both witnesses in the case, giving evidence in terms of the RICS professional statement for surveyors acting as expert witnesses in Scotland, spoke to written precognitions, copies of which, helpfully, were made available to the Committee.

EVIDENCE FOR THE APPELLANTS

Mr McCormack reminded the Committee of the terms of Section 6(8) of the Valuation and Rating (Scotland) Act 1956 – “the net annual value of any lands and heritages, shall be the rent at which the lands and heritages might reasonably be expected to let from year to year if no grassum or consideration other than the rent were payable in respect of the lease and if the tenant undertook to pay all rates and to bear the cost of the repairs and insurance and the other expenses, if any, necessary to maintain the lands and heritages in a state to command that rent.”

The tone date for the 2017 revaluation is 1st April 2015 and the valuations are based on the physical circumstances of the subjects as at 1st January 2017.

One looks at the rent which the hypothetical tenant might reasonably be expected to pay for the subjects. The actual rent payable for the subjects, taking into account any incentives, may be of significance.

Referring to Scottish Assessors Association (SAA) Practice Note 1, shops are valued by application of the comparative principle of valuation using rates per m² derived from an analysis of local rental evidence. Rental analysis is undertaken in accordance with SAA basic principle committee Practice Note 1 (adjustment of rents).

SAA Practice Note 3 relates to the valuation of large shops and department stores. Large shops are identified in terms of size and style of the unit in comparison with neighbouring subjects. It generally includes stores in excess of 1,400 m² but can apply to smaller stores. As examples of a large shops in this valuation area he cited the Marks and Spencer, Debenhams and H & M stores, all in the Eastgate Centre, Inverness. In answer to a question from the Committee, Mr McCormack conceded the demarcation between the subject categorisations of supermarket, retail warehouse and large shop is not always clear. However, having regard to the nature and size of the subjects, the use to which they were being put, their location in the town of Wick, near to the High Street, pointed to these being properly regarded as a large shop. The level of rent being paid by the Appellants suggested the categorisation of large shop. The significant difference, though, in terms of categorisation was as between a supermarket on the one hand and retail warehouse or large shop on the other hand. Retail warehouses and large shops are valued on the same basis. Large shops are valued by the application of the comparative principle taking the gross internal area and applying to that a rate derived from the rental analysis of similar units, not what he described as “standard” shops. In this case the Assessor had valued the subjects as a supermarket and according to Mr McCormack that was not the correct approach. The subjects were, and should be valued as, a large shop.

The valuation of retail warehouses is referred to in SAA Practice Note 5. Retail warehouses are subjects purpose built within retail/leisure parks. They are usually situated on the edge of town or in standalone locations. They are valued on the comparative principle derived from rents of subjects of similar size, character and location.

In analysing rents Mr McCormack stated that regard had to be had to both the terms of the Lease being analysed and the possible motivations of each of the parties in respect of the offer and acceptance of incentives. It is generally considered that a new Lease will provide the best rental evidence although other rental evidence such as rent reviews may be considered equally important. At the commencement of a Lease the tenant or sub-tenant does not know the trading potential or the return that will be realised from occupation whereas at rent review these factors will be known.

The granting of a rent free period requires to be adjusted by regarding it as an incentive. The SAA Practice Note allows the incoming tenant a period of three months to fit out and no adjustment is made to the rent. For periods greater than three months, the Assessor will require to make an adjustment to the rent.

Mr McCormack submitted the following rental analysis to the Committee:-

Lease Start	17.09.2012
Term	10 years
Rent Free	15 months
Rent	£56,000
Break	Tenant only at five year intervals
Review	Five yearly
Approach	First three months RF ignored

Analysed rent over 10 year term

Rent	£56,000
YP 9 years at 9%	5.9952
PV 1 year at 9%	0.9174312
Capital Value	£308,010
Divided YP 10 years at 9%	6.4177
Annual value	£47,994
Analysed Rate	£47,994 / 1417.65 m ² equals £33.85

The main retail street in Wick is High Street. The Appeal subjects are located close to the High Street. Access to the Appeal subjects is taken via a side street. This rendered their location a secondary retail location. There were no other retail warehouses or large shops in such secondary location in Wick. In valuing the shops in the High Street the Assessor had applied a Zone A rate of £115 m².

There are three modern supermarkets in Wick – a Tesco “Superstore” (4,645 m²) with petrol filling station situated on North Road; a Co-operative supermarket situated in Angle Park on the western periphery of the town and Lidl situated on South Road adjacent to Wick Retail Park.

The Retail Park is located on the southern outskirts of the town. It comprises seven non-food retail units of modern Class 1 retail warehousing, developed in 2005/06. The units vary in size from 249 m² to 2,323 m². The Retail Park has car parking for 240 vehicles. It forms the central destination for shopping in Wick and the surrounding area.

Wick is 22 miles distant from Thurso, 92 miles from Dingwall and 102 miles from Inverness.

The Assessor has valued the Appeal subjects as a “supermarket” at a rate of £90 m². Mr McCormack contended it was incorrect to value the subjects as a “supermarket” because it was not operated as such. The subjects should be valued as a large shop.

The Assessor’s valuation paid no recognition to the passing rent of the Appeal subjects. The location of the Appeal subjects in Wick was different from other areas used by the Assessor for comparison purposes in terms of prominence, footfall and the population sizes of the locations in which the comparisons were situated.

EVIDENCE FOR THE ASSESSOR

In the understanding of Mr Shepherd, the Assessor and the Appellants are in agreement as to the area of the subjects and the rates per m² derived from analysis of rental evidence of the Appeal subjects. Where the parties differ is as to the nature, character, use and characterisation of the property, applicable comparisons and therefore ultimately the approach to the valuation of each.

They also differ significantly on the weight to be attached to the rental transactions for the Appeal subjects and the consequent interpretation of this and deciding what the level of value would have been at the tone date of 1st April 2015 – ie the rate per m² which the hypothetical tenant would be prepared to pay.

At revaluation, the Assessor makes a fresh start in terms of level of value. He is not bound by the levels of value struck at previous revaluations or the methods or schemes of value adopted for the previous revaluation or any relationships between the rent rate used for the previous Valuation Roll.

That said Mr Shepherd then noted that for the 2010 revaluation the subjects were valued as a supermarket and that the rateable value was £129,000. By the time of the 2017 revaluation, the Appellants were in occupation. The subjects had not undergone any physical changes and their use of the property was very similar to that of the previous occupants. It therefore appeared reasonable to continue to value the property as a supermarket. Mr Shepherd regarded the rent passing between the Co-op and the Appellants of £56,000 per annum to be very low. Given his knowledge of the levels of value in the immediate area and wider Highland area for properties of this size, he decided it was out of line with similar properties.

He noted that the rent was agreed in September 2012, some two and a half years prior to the tone date. He was therefore comfortable in setting aside that rent as being too low. In any given “basket” of rental evidence, it is not unusual to find some low rents and some high rents, and the level of value which the hypothetical tenant will pay will often be somewhere in between.

The difficulty in valuing supermarkets is due to the lack of rental evidence. There is a limited amount of rental evidence throughout Scotland due to most of such subjects being owner/occupied. At revaluation Assessors rely on those of their colleagues with rental evidence to take the lead in setting their levels of value.

For the 2017 revaluation the rateable value of the Appeal subjects was left unchanged from the 2010 revaluation – £129,000 (albeit the Assessor was now defending a figure reduced to £127,000).

The Assessor relied on a total of nineteen comparisons. Eleven of those were classed as supermarkets, one was classed as a shop and the rest were retail warehouses.

Two of the supermarkets were located in Wick with unit rates of £100 and £110 m². Seven of the retail warehouses were situated in Wick with unit rates varying between £80 and £126 m².

The other comparative subjects were in various locations such as Thurso, Ullapool, Dingwall, Alness, Tain, Beaully and Nairn.

He advised the Committee that the majority of Co-op, Lidl and Tesco supermarkets in Highland up to a size of 1,850 m² have now been agreed with the Assessor. The Wick Lidl Appeal was withdrawn at a rate of £110 m² (a rise from £90 m² at 2010) and the Wick Co-op store Appeal was withdrawn at a rate of £100 m² (a rise from £90 m² at the 2010 revaluation). The former Co-op store in Tain, now occupied by TJ Morris trading as Home Bargains, has been agreed on a supermarket basis at £110 m² (a rise from £100 m² at the 2010 revaluation).

Traditional supermarket retailers and those retailers stocking a mixture of goods, for example, “B & M”, “Home Bargains”, “Poundland” and “Poundstretcher” have similar property requirements. They require large open plan premises in which to stock their goods wide and high so as to try to sell quickly and replenish the shelves with new stock on a regular basis. They require loading facilities, storage/warehousing areas, car parking for customers and a convenient location. They require space, ease of access and visibility.

Retail warehouses are valued by the comparative method of valuation by analysing rents of similar properties. The rents are analysed to a rate per m² and schemes of value are prepared for the different property types. The rents are commonly “shell” rents – ie the rent is agreed for a property/building shell without fittings, fixtures and finishes. A retail warehouse valuation is “built up” from a basic rate per m² with then an addition for fit out with further additions reflecting on whether a property benefits from air conditioning and/or a sprinkler system. He noted that the Poundstretcher store in Fort William and the Poundstretcher store in Inverness had been agreed on Appeal with Mr McCormack at rates of £119 m² and £90 m² based on the retail warehouse scheme and from an analysis of rents for retail warehouses at those locations. The Poundstretcher store in Inverness had a rateable value agreed of

£124,000 while the passing rent with effect from November 2014, close to tone, is £8,500. He suggested this was similar to the Appeal subjects – a low rent and significantly higher rateable value. Rent is not always a true reflection of market value of the property.

Due to the fact that the Poundstretcher units in Fort William and Inverness have been agreed on the basis of a retail warehouse valuation and, in his view, the two types of property being similar to the Appeal subjects, he considered it appropriate to carry out a retail warehouse valuation of the Appeal subjects to compare and contrast with the supermarket valuation. This seemed reasonable to him given the lack of rental evidence for supermarkets and his view about the similarities between retail warehouses and supermarkets. The retail warehouse resulted in a figure of £130,000 rateable value compared with £129,000 on the supermarket basis.

SUBMISSIONS FOR THE APPELLANT

The Appeal subjects had initially been valued as a supermarket at £90 m². They should not have been valued as a supermarket. In any event there was no rental evidence to support the level of value as a supermarket. Instead, the Assessor relied on agreements on valuations of supermarkets elsewhere in this Valuation Appeal Panel area. The Appellants had analysed the passing rent on the Appeal subjects and the outcome of that analysis had been agreed by the parties. There had been no rental uplift sought by the Landlord in the 2017 review.

Neither had the Assessor produced evidence of rents supporting the valuation of the Appeal subjects as a retail warehouse. Instead he relied on agreement struck with rate payers in relation to retail warehouse subjects in Wick Retail Park. The Assessor had ignored the most

compelling piece of evidence, namely, the rent struck between the Appellants and the Co-op who were, respectively, willing Tenant and willing Landlord.

He invited the Committee to uphold the Appeal.

SUBMISSIONS FOR THE ASSESSOR

Mr Clarke began by reminding the Committee that it was master of the facts. Ultimately it would be for the Committee to decide where the correct level of value lay. It need not be at either end of the spectrum adopted by the parties – the Committee could determine a level of value which lay between the two extremes.

In his deliberations, the Assessor had not ignored the piece of evidence favoured by the Appellants, namely the rent passing between them and the Co-op. In his evidence, Mr Shepherd said he had considered that rental level. However, taken alongside the basket of other evidence available, it was too low to have any reliance placed upon it.

The reliability of that rental evidence was questionable having regard to its significantly lower level than the rent paid by the Co-op to the Head Landlord.

There was also the curiosity of the Co-op choosing to occupy other premises in Angle Street, Wick whilst still leasing the Appeal subjects from the Head Landlord and then sub-letting them to the Appellants at a significant loss.

In relation to the Co-op's premises in Angle Street, they appear, on the face of it, to be less attractive than the Appeal subjects. A rateable value calculated on the basis of £100 m² had

been agreed with the rate payer in relation to that Angle Street premises, suggesting that the figure contended for by the Assessor in relation to the Appeal subjects, calculated on a unit value of £90 m² was perhaps on the low side. If the passing rent was not “safe” it was then necessary to look at the evidence available in relation to supermarkets and retail warehouses.

Mr Clarke asked the Committee to prefer the Assessor’s methodology. The Appeal subjects had always been valued as a supermarket and there had been no physical changes.

If, however, the Committee decide the Appeal subjects should be regarded as a retail warehouse and valued as such, the evidence presented points to the rateable value being higher than the £90 m² level proposed by the Assessor.

Mr Clarke invited the Committee to dismiss the Appeal.

DISCUSSION & DECISION

The principal issue which emerged in the course of this Appeal was as to how the Appeal subjects should be categorised – as a supermarket, as a retail warehouse or as a large shop. The Appellants contended the proper category was as a large shop while the Assessor’s primary position was that the Appeal subjects should be valued as a supermarket. It was curious, therefore, that neither party, particularly the Appellant, produced evidence as to value as a large shop.

On the basis of the evidence which was presented to it, the Committee found the Appeal subjects are situated in what can be regarded as the tertiary retail location in Wick – after the High Street which is itself secondary to the Retail Park.

The Committee found that the absence of car parking dedicated to the Appeal subjects and the restriction on the sale of alcohol in the Appellants Lease were matters which did impact on rental value. From its own knowledge of the comparisons cited, the Committee was aware of few, if any, of the subjects listed which operated under these same restrictions.

While rejecting the Appellants' submission that the Assessor had ignored the evidence of the rent being paid by the Appellants – Mr Shepherd had clearly had regard to that evidence – the Committee took the view that it was a matter which had been given insufficient weight by the Assessor. This was particularly so, given the relative lack of rental evidence from elsewhere. He had noted the need to reject a “low” rent from a “basket” of rents but had presented no “basket” of rents.

As for the comparisons of the Assessor, on settlements made elsewhere, where, in the experience of the Committee, these were generally more modern premises situated in what could be regarded as more vibrant retail locations, their utility as valid comparisons was limited. This was particularly true in, for example Dingwall and Beaully.

Having regard to all of the evidence which was available to it, the Committee determined that the proper level of value lay between the position for which the parties argued.

The Committee considered that, given the size and location of the appeal subjects, the passing rent probably did represent the achievable rent. The Committee recognised, however, that the passing rent might be considerably below the net annual value on the statutory assumptions because of the use restriction in the lease. It would therefore be necessary to apply an uplift

to the level of the passing rent and, in the total absence of relevant evidence, this could only be done as a matter of judgement.

Applying a unit rate of £50 m² to the rental analysis of Mr McCormack referred to at page 6 above, produces a figure of £70,850. Rounded up, the Committee therefore determined that the rateable value of the subjects was properly stated in the sum of £71,000.