

**THE HIGHLAND & WESTERN ISLES
VALUATION APPEAL COMMITTEE**

Inverness, 10 October 2018

Subjects	Reference Number
Retail Warehouse, Unit 1, Sir Walter Scott Drive, Inverness, IV2 3ED	06/34/750005/4
Retail Warehouse, Unit 4, Inshes Retail Park, Sir Walter Scott Drive, Inverness, IV2 3TW	06/34/750020/5
Retail Warehouse, Unit 5, Inshes Retail Park, Sir Walter Scott Drive, Inverness, IV2 3TW	06/34/750050/4

The Appellants
Matalan Retail Ltd
Hobbycraft Trading Ltd
Dunelm (Soft Furnishings) Ltd
For the Appellants
Christopher Haddow, QC

The Respondent

Assessor

For the Respondent
Brian Gill, Advocate

INTRODUCTION & DESCRIPTION OF SUBJECTS

The Appeal Subjects are three retail properties within Inshes Retail Park, Inverness. The parties were agreed as to the physical facts in relation to each of the Appeal Subjects. The issue for the Committee to determine was the appropriate valuation rate per square metre to be applied. It was common ground that whatever the rate, it should be the same for all three subjects. In the Valuation Roll the Rateable Value of the subjects is based on a rate of £150 per square metre. On appeal, the Assessor was

defending a reduced rate of £142.50 per square metre. The Appellants contended for a rate of £100 per square metre.

For the Appellants, Mr Hadow led evidence from Derek Kidd MRICS, an Associate Director with G L Hearn, Surveyors, Glasgow.

For the Assessor, Mr Gill led evidence from Fiona Rostock, MRICS, a member of staff in the Assessor's Inverness Office.

EVIDENCE FOR THE APPELLANTS

Mr Kidd explained that Inshes Retail Park is situated in the south east of Inverness. The oldest units in the Park were built at least 20 years ago and there have, since then, been two phases of significant development in 2012 and 2016. The Retail Park is anchored by a Tesco Supermarket and Dobies Garden Centre.

The Appeal Subjects were valued at £150 per square metre at the 2010 revaluation and in the new Roll the Assessor maintained that same rate.

The rate of £142.50 per square metre now being defended by the Assessor had been accepted by two sets of professional agents, representing Deichmann and B & M. Mr Kidd was not privy to the motivation of the agents for acceptance of the offer of £142.50 per square metre. He surmised it may not be unconnected to the fact that that rate represents a level below the passing rent for those two subjects. He also advised that those passing rents were struck much later than the tone date of 1 April 2015 and for that reason do not provide the best evidence for establishing value in relation to

the Appeal Subjects. He understood the negotiations between those agents and the Assessor proceeded on the basis that if the reduced offer based on a rate of £142.50 per square metre was not accepted by the rate payers, the offer would be withdrawn if the cases proceeded to appeal.

The values for the 2017 revaluation should reflect the hypothetical rental value of the properties as at 1 April 2015. The most relevant rental evidence is that struck just prior to the April 2015 tone date.

Retail warehouses are valued on the comparative principle and so rental evidence for the Retail Park is ingathered and the individual rents are examined in relation to each other to ascertain the hypothetical rental value at the tone date.

Each individual piece of rental evidence should be considered to determine the appropriate weight to be attributed to it in arriving at the general level of rent. In this regard he referred to guidance provided to the Assessors by way of the SAA Basic Principles Committee Practice Note No. 1 – Adjustments of Rent. Being a document produced by SAA it is not accepted by everyone as the definitive guidance for rental analysis.

Mr Kidd considered the following subjects:-

UNIT 1 – MATALAN

This is the largest Unit in the Retail Park at 4,266.84 square metres, almost double the size of Dunelm, the next largest. Matalan took a lease in November 1999 for 25 years and pay a rent of £555,250. This is on upwards only review terms. There was no

increase at the 2004 and 2009 reviews. The 2014 rent review was not triggered as there was no prospect of an increase in rent. Due to the size of the Unit and the fact that the rent dates from 1999 it did not feature in the discussions between agents for the Appellants and the Assessor. It is not deemed to be relevant to the 2015 tone. This 1999 rent analyses to £187 per square metre.

UNIT 2 – BRANTANO

Brantano took a lease on this Unit in 2007 for 10 years. The rent analysed to £163 per square metre. As a result of the 2012 review there was no uplift. The Unit was vacated at the end of the lease in 2017. It has not been re-let. It is one of the two smallest units in the Retail Park. Again, this Unit has not featured in the discussions between the Appellants' agents and the Assessor.

UNIT 3 – DEICHMANN

This Unit was let in 2001 on a 15 year lease. The rent analyses to £151 per square metre. There was no uplift at review in both 2006 and 2011. It is the smallest Unit in the Retail Park at 629 square metres. It remains, essentially, a 2001 rent. Agents for the Appellants had been advised that Deichmann agreed to a renewal on the same terms in September 2016, some seventeen months after the tone date.

UNIT 4 – HOBBYCRAFT

Hobbycraft took a new lease in September 2012 for 15 years at a rent of £150,000. They received three months' rent free and a capital contribution totalling £232,500. There is a break in the Lease after year 11. Mr Kidd submitted this was a key piece of evidence as one of only two new lettings before the tone date. There was some doubt as to the total value of the capital contribution adjustment. Depending on the view one took of that the rent analyses to either £111 per square metre (Mr Kidd's view) or

£117 per square metre (the Assessor's view). Either way, the difference was of little moment.

UNIT 5 – DUNELM

Dunelm took a lease in September 2012 at a rental of £270,250. They received an 18 month rent free period and a £495,000 capital contribution. This rent analyses to £78 per square metre. It was one of only two new lettings struck before the tone date and as such should be considered an important piece of evidence.

Mr Kidd acknowledged, however, that the rent was low in comparison to other passing rents in the Retail Park.

UNIT 6 – B & M

This was a new Unit completed in October 2016 and entered in the Roll in November of that year. The headline rent was £352,000 per annum with the tenants receiving a 12 month rent free period. The rent analyses to £169 per square metre. The Assessor had originally analysed this rent at £152 per square metre but then granted a 10% quantum allowance as an incentive to the agents for those rate payers to settle their appeal. It now analyses to the higher figure and is out of line with the other rents in the Retail Park.

In analysing the rents Mr Kidd quoted from the SAA Practice Note previously referred to, Section 4.2 – “caution should be exercised with regard to reviewed rents where there has been no uplift on review and the rent review clause is restricted to upward only movement”. This was, he said, precisely the case with the rent in respect of Matalan, Brantano and Deichmann.

Based on those three rents in isolation all they indicated was that the tone date rate cannot be any higher than £151 per square metre – i.e. the lowest of the three nil uplifts. Further, it indicated that £151 per square metre was the open market value in 2001 when that lease was struck and it offered no further insight on where the tone was at April 2015.

Mr Kidd did not dismiss those pieces of evidence out of hand but submitted that they were of little relevance if there is other evidence closer to the tone date.

There is rental evidence closer to the tone date – the lettings to Hobbycraft and Dunelm in 2012. They analysed to £111 per square metre and £78 per square metre respectively. They appeared to be open market lettings and as such were ideal for indicating valuation for rating. If those were the only rental evidence available they indicated that £100 per square metre would be the general level of value in the retail park in September 2012.

Taking those rents alongside the previously mentioned nil uplifts indicated to Mr Kidd that the general level has fallen from around £150 per square metre to £100 per square metre between 2006 and 2012. There was no further evidence from the Retail Park between 2012 and the tone date of April 2015 so it would be entirely reasonable to value it at £100 per square metre on those rents alone. There was no further evidence emerging from this Retail Park until a year and a half after the tone date when B & M took occupation and Deichmann renewed their Lease. In his professional experience it was very unusual for evidence of rents struck 18 months after the tone date to be taken into account, especially if there was relevant evidence

of other rents closer to the tone date, particularly where that evidence came from pre-tone transactions.

Mr Kidd referred to a programme of works to demolish two Units formerly occupied at the top part of the site and to replace them with a B & M, a soon to open Costa Coffee drive through and a McDonald's restaurant. The legislation compels the Assessor to value based on the physical circumstances as at 1 January 2017. The Assessor here was saying that in setting the rate of £142.50 per square metre in relation to the evidence previously discussed, replacing two Units in the south end of the Retail Park with B & M and McDonalds has materially affected the value of the other Units to the extent that had the new Units been in existence at the tone date the rental value of the Park would have been 42.5% higher than the level shown by the rents in 2012.

In Mr Kidd's submission such an effect was unlikely as the work at the south end of the Park is remote in relation to the rest of the retail warehouses. Units 1 to 5 are all adjacent to each other and were in existence at the tone date. There is a break in the Parade of Units formed by Bannatyne's Gym and in his view the notion that the new development could have had such a dramatic effect is unlikely. He submitted there were three reasons for that:-

- (a) There were factors to suggest the B & M rent was higher than the general level;
- (b) That would place the rental values in the Park too high in relation to rents elsewhere in Inverness and would involve attributing less weight than should be given to the individual pieces of rental evidence which were available;

(c) The B & M rent could not have been taken into consideration when setting the rate for the Appeal Subjects and others.

In conclusion, Mr Kidd expressed the opinion that the Rateable Value of the Appeal Subjects should be calculated on the basis of a rate of £100 per square metre. The two new lettings in 2012 provided sufficient evidence to draw this conclusion and should be afforded more weight than the nil uplift reviews and post tone evidence. His position was reinforced by the relativity of this rate to the other retail warehouse locations in Inverness.

Any weight attributable to the agreements which other firms had struck with the Assessor is reduced when it is considered that those agents struck their agreements with the Assessor on the assumption that the Assessor would be seeking to defend a rate of £150 per square metre.

EVIDENCE FOR THE ASSESSOR

Mrs Rostock advised the Committee that in setting the 2017 basic rate for Inshes Retail Park, the Assessor had limited tone date rental evidence on which to rely. Out of the total of the six retail warehouses on site, there were only two relevant rental transactions, both agreed in 2012. Of the four others, Matalans (Unit 1) had not been reviewed since they occupied the Unit in 1992; Unit 2, occupied by Brantano and Unit 3 occupied by Deichmann had not had their rents increased on review since 2011; the Unit occupied by B & M was believed to be owner occupied at the time and therefore considered to have no passing rent.

In respect of the two 2012 rents, Unit 4 was let to Hobbycraft under a new lease in December 2012 and Unit 5 was a new Unit let to Dunelm in September 2012. The analysis of these two rents, adjusted for incentives such as capital contributions from the landlord to the tenant and rent free periods resulted in an adjusted shell rent rate of £68 per square metre for Dunelm and, depending on the analysis, a rate of between £111 per square metre and £118 per square metre for the Hobbycraft Unit. She agreed with Mr Kidd that the difference in those two rates depending on how the incentives for Hobbycraft were treated was not significant for the purpose of the analysis which was required to be carried out. Looking to the 2010 tone rates and the rental evidence for retail warehouses throughout Inverness, the £68 per square metre for Dunelm looked very low even when account was taken of the fact the Running Roll entry in the Valuation Roll for Dunelm included a 10% end allowance deduction for quantum which effectively increased the analysed rent from £68 to £74 per square metre.

In any given "basket" of rental evidence it was not unusual to find some low rents and some high rents. The level of value which the hypothetical tenant will pay will usually be somewhere in between those two extremes. There was not a basket of rental evidence to consider here, just two pre-tone rents. From her initial appraisal she had discounted the Dunelm rent as being too low and did not take it into account in ascertaining the tone level of value.

The Assessor firstly examines the terms of the lease being analysed and secondly determines, where possible, the motivations of both the landlord and the tenant.

Significant incentives were agreed with Dunelm, a capital contribution of £450,000 from the landlord to the tenant and 18 months' rent free.

She was aware that some landlords offered good incentive packages and/or lower rents to what are termed "anchor tenants". New retail warehouses are often let as "shell" properties with tenants being responsible for fitting them out. This is often at significant cost to the tenant. In the case of Dunelm, a first floor was installed with access via lifts and they installed a café within this first floor space. She concluded that since retail values had fallen generally, the Hobbycraft rent was probably indicative of the 2012 level of value. This pointed to values having fallen from 1 April 2008, the date for the 2010 revaluation, to late 2012 when the Hobbycraft rent was agreed.

She was aware that the Retail Park had expanded in 2016. She referred to the Valuation Timetable (Scotland) Order 1995 which provides that statutory valuations are to be made "on the basis of levels of rents prevailing at 1 April two years prior to a year of valuation" and "on the basis of the physical circumstances of properties as at 1 January in the year preceding the year of revaluation". The 2017 revaluation valuations were therefore based on open market rental levels on 1 April 2015. The McDonald's Unit and the B & M Unit were occupied during 2016, but the tenants and landlords would have begun negotiating rents and lease terms much earlier in the knowledge that the Retail Park was being developed and expanded. The construction of the Units had occurred close to the tone date. Given the lack of rental information, but mindful that there had been some developments and expansion in the Retail Park,

she had decided to maintain the 2010 basic rate per square metre at £150 for Inshes Retail Park.

The lease renewal on Deichmann and the new let to B & M were not known to her at the time of ascertaining the 2017 revaluation retail warehouses rate per square metre for Inshes Retail. They were not known prior to the 2017 Valuation Roll being published.

The Deichmann lease renewal was made known to her by Mr Kidd when appeal negotiations began. The rent of the new B & M Unit was advised to her during discussions with the agent dealing with those subjects. She therefore carried out a reappraisal of the four rental transactions. Given the difference in the dates of the four rents, two in 2012 and two in 2016, she had come to the view on what the tone date rate per square metre ought reasonably to be.

She remained of the view that the Dunelm rate of £74 was too low. It was quite out of line with the three other transactions in the Retail Park. She was satisfied that her original decision that the Dunelm rate was low was still a reasonable conclusion to reach in the face of the new evidence which had come to her attention. She was satisfied that the Hobbycraft rent of £118 per square metre was probably more indicative of the 2012 level of value. She believed that from 2012 until 2016 rents have been rising steadily to a level in the region of £150 to £170 per square metre. This was demonstrated by the Deichmann lease renewal and the B & M new lease. Looking at what were regarded as the poorest retail park locations in Inverness – Carse/Telford which had been agreed at £90 per square metre with several agents, this

confirmed that her starting point of £118 per square metre for a Unit at Inshes in 2012/2013 was not unreasonable and the rental rates per square metre of the 2016 rents demonstrated how the rents have moved over this period.

To assist her in determining the correct rate at the tone date, she plotted the rental rates per square metre on a graph and concluded that a rate of £142.50 per square metre would be the rate the hypothetical tenant would have paid for a Unit at Inshes Retail Park at the tone date. She was also mindful of the fact that appeal negotiations for other retail warehouse locations were being concluded and the rate of £142.50 for Inshes Retail Park did not look out of line with levels of agreed value elsewhere in Inverness. The Dunelm rent was so low and out of kilter with the other three rents that it ought to be set aside and not taken into account when deciding on tone date values.

SUBMISSIONS FOR THE APPELLANTS

On behalf of the Appellants Mr Haddow submitted that while post tone date evidence may be competent, the nearer to tone the better. According to Mr Kidd's evidence, it was not normal for evidence of rents struck 18 months post tone to be taken into account, especially when there was evidence available from nearer tone date. In this case there were two pre-tone rents which were of greater assistance.

Mrs Rostock was content with a value of approximately £115 per square metre for Hobbycraft as at 2012. It was puzzling, therefore, how, with that view, she remained content with her initial revaluation rate of £150 per square metre for Inshes Retail Park.

She had included in her analysis, a straight line graph in which rents were plotted but there was no evidence as to when any increase in rents happened after 2012 nor as to the rate of increase. There was no evidence, for example, to support the hypothesis that any increase had been on a straight line basis.

He reminded the Committee of the fact that the Assessor has to value according to the physical circumstances as at 1 January 2017 and thus should disregard physical changes occurring after that date.

As for the recent agreements with agents, caution should be applied when deciding on the weight to be attached to those. The rate of £142.50 agreed by Deichmann represented a 5% reduction on the rate originally contended for by the Assessor of £150 per square metre.

The B & M Rent, analysed with regard to quantum, equated to £169 per square metre which made the rate of £142.50 eventually agreed with agents for those Rate Payers quite an attractive proposition for them. It was also the case that these offers to those Rate Payers had been made by the Assessor under threat of withdrawal of those offers if they were not accepted ahead of the appeal hearing. The offer to B & M, which they accepted, represented a saving of approximately £40,000 over the duration of this revaluation.

In relation to the agreements reached by Deichmann and B & M, Mr Haddow referred the Committee to the summary of Lord Avonside in *Milligan -v- Assessor* for

Strathclyde Region, 1982 SLT 369 at 372 – “Where assent has been given by a Rate Payer employing skilled advice, or where in any given area a substantial group of Rate Payers assent, such evidence may be of limited value. But there are many reasons of which the most important may be financial, which may prompt a Rate Payer to accept the valuation rather than appeal against it and that must be borne in mind when evidence of assent is said to justify a valuation.”

In relation to the present appeals, there were two valuers bringing expertise to their analysis of the available evidence. The difference between the two essentially was the relevance of the post tone evidence.

If the post tone evidence was disregarded, Mr Haddow invited the Committee to prefer Mr Kidd’s analysis.

If full account is to be taken of the post tone analysis the Committee must be satisfied it justified an increase of 42.5% as between 2012 and 2016 values. However, that was not the basis for Mrs Rostock’s original £150 per square metre figure.

As part of his analysis, Mr Kidd had performed an exercise taking account of the post tone evidence but he still concluded with a figure well below the level of £142.50 per square metre. So, while his position was that it ought not to be taken into account, if it is taken into account it would not result in a figure as high as that for which the Assessor was contending.

Here the issue was one of fact, to be determined by the Committee. Where there was competing testimony of expert witnesses it was open to the Committee to decide which evidence to accept. The Committee could accept Mr Kidd's evidence in its entirety or that of Mrs Rostock. Alternatively, the Committee could decide on a figure between the two.

If there had been an increase in rents, as suggested by Mrs Rostock, there was no evidence to support the premise upon which she had proceeded which had been that it was a straight line increase between 2012 and 2016.

SUBMISSIONS FOR THE ASSESSOR

Mr Gill moved for dismissal of the Appeals at the rate of £142.50 per square metre.

In his submission the evidence justified Mrs Rostock's analysis.

He referred to the Opinion of Lord Doherty in the case of Bellhaven Brewery Company Limited –v- The Assessor for Ayrshire Valuation Joint Board, [2014] CSIH 89, paragraph 14, “A rent or turnover from after the tone date may be the best available evidence of annual value at the tone date.” He referred also to paragraph 19-19 of Armour on Valuation for Rating in relation to the comparative principle where it is stated “(a) if there are in existence subjects which in size, character and location are sufficiently comparable with the subjects to the valued; and (b) if those subjects are let upon the statutory terms or at rents which, by the modifications already dealt with, can be adjusted so as to represent the rents of those subjects on the statutory terms, then the annual value of the subject to be valued may be arrived at by

consideration of the rents payable for the comparable subjects. This involves making an analysis of those rents, so that a judgement can be made by inference or deduction as to the rent at which the subject being valued could have been expected to be let in the open market.”

“Valuation by the comparative principle can never be a mere matter of arithmetic, however, since it involves a skilled appreciation of all of the various factors which may influence value as between one subject and another. It is necessary, when the art of valuation is being exercised, to avoid rigidity of approach and to have regard to all relevant circumstances.”

In Mr Gill’s submission, Mr Kidd had paid only lip service to post tone date evidence. It did not matter that that evidence was not available to the Assessor when considering the Rateable Value to be entered in the Roll for the Appeal Subjects nor that it would not have been available to the hypothetical tenant. There was no time restriction on when post tone date evidence was relevant and there was no such suggestion from the quotation referred to from Lord Doherty. In the absence of a substantial body of rental evidence it was not unreasonable or strange to proceed as Mrs Rostock had done.

Having been provided with new information she revised her view on the rate per square metre. It was proper for the Committee to look at all the evidence available to date.

The Dunelm rental was an outlier and it was perfectly proper for Mrs Rostock to have excluded that from her analysis. It appeared Mr Kidd did not rely on Dunelm either which suggested that he did not think it represented true market value.

As for the exercise conducted by Mrs Rostock of plotting rents on a straight line graph as between 2012 and 2016 and which supported the rate of £142.50 per square metre, Mr Haddow for the Appellants had conceded that it was not impossible rents might have arisen in that way and so it was reasonable for Mrs Rostock to draw the inference that they had risen in that way.

The outcome of that graph also fitted in with the appeals which had been settled by negotiation with agents.

Referring to the quotation from Lord Avonside in the case of Milligan –v- Assessor for Strathclyde Region already referred to, Mr Gill submitted that Lord Avonside was not saying that appeal settlements could not be looked at. He conceded they may not be a primary source of evidence but nonetheless they could provide relevant evidence. Mr Gill posed the question if the agents in two appeals which had settled by negotiation at £142.50 had thought the true level of value was £100 – the level contended for by the agents in the present appeals – they would not have agreed on a figure of £142.50 per square metre.

DISCUSSION & DECISION

The physical characteristics of the subjects and all other matters having been agreed, the issue for the Committee in this case was the rate per square metre which should be used as the basis for calculating the Rateable Value of these three Appeal Subjects.

The Appellants argued in support of a figure of £100 per square metre; the Assessor contended for £142.50 per square metre.

It was common ground the subjects fell to be valued on the basis of the comparative principle.

There was not one piece of evidence to which either side could point which fixed the rate per square metre of the Appeal Subjects at a particular level. The parties were at issue as to what pieces of rental evidence which were available were relevant and the weight which should be attached to that evidence.

The Committee considered that all of the comparative evidence founded upon was relevant. The question was as to the weight to be attributed to those different pieces of evidence and the conclusions as to value to be drawn from it.

Matalan – That this was a rent struck in 1999 and that none of the three, 5 yearly rent reviews provided for in the lease between the date of commencement of the lease and the tone date had resulted in an increase in the rental level, persuaded the Committee that this could not be relied upon as a significant indication of rental values as at the tone date.

Hobbycraft – This was a new 15 year lease entered into in September 2012 at a rent adjusted to either £111 per square metre or £117 per square metre depending on the manner of treatment of incentives. This appeared to the Committee to be an important piece of evidence.

Dunelm – The parties were agreed this rent appeared to be low. Nonetheless it was one of only two new rents struck in Inshes Retail Park prior to the tone date. For this reason, the Committee considered it should not be disregarded altogether.

Deichmann & B & M Settled Appeals – Standing the lack of evidence as to the bases upon which these appeals were settled, the Committee was not satisfied the figures at which they settled could, in and of themselves, be regarded as a reliable indication of rental value. In assessing the relevance of the rental evidence from these two transactions to the task in hand, the Committee also had regard to the fact that the Deichmann rent was struck in 2001 and the B & M rent was struck 18 months post-tone.

Mrs Rostock's analysis of rental evidence in Inshes Retail Park between 1 April 2012 and 18 June 2016 – this graphic analysis bore to be a “check” and support of the Assessor's figure of £142.50 per square metre. However, the utility of this graph was limited. Firstly, it disregarded completely the Dunelm rent. Secondly, it assumed a “straight line” increase in rents as between 1 April 2012 and 18 June 2016. There was no evidence presented to the Committee as to the factual basis for the assumption the rate of rent increase was steady over the period beyond Mrs Rostock's contention that such an assumption was reasonable.

Subjects in Other Retail Warehouse Locations in Inverness – the rate per square metre in Inshes Retail Park was third highest of six retail warehouse locations in Inverness ranging from Eastfield Way at £275 per square metre at the top, to the Carse at £90 per square metre at the other end. This was a useful piece of evidence in establishing the relativity of rateable values as between the various locations.

Having regard to all of the evidence presented to it, the Committee considered there was not a significantly robust factual basis to support a valuation of £142.50 per square metre. Instead it concluded the Rateable Values of the Appeal Subjects should be calculated on the basis of £120 per square metre and to that extent allowed these three Appeals.