

VALUATION TRIBUNAL FOR ENGLAND



Non-domestic rating; 2010 rating list appeals; accuracy of RV in list; football training grounds and academies; contractor's test; ability to pay; Tomlinson (VO) v Plymouth Argyle Football Club Ltd and Plymouth City Council [1960] 53 R & I.T. 297 CA; appeals allowed in part.

RE: (1) The Academy Blackburn Rovers, Brockhall Village, Old Langho, Blackburn BB6 8BB (2) Moor Farm Training Centre, Morley Road, Oakwood, Derby DE21 4TB; and (3) Middlesbrough Football & Athletic Company (1986) Ltd, Rockcliffe Park, Hurworth, Darlington, County Durham DL2 2BP

APPEAL NUMBERS: 235019317461/538N10, 102525506107/036N10 and 135023188509/539N10

BETWEEN: (1) Blackburn Rovers Football Club, (2) Derby County Football Club (3) Middlesbrough Football & Athletic (1986) Ltd Appellants

and

Mr Stuart Moss (1) Respondents
Mrs Janet Alexander (2)
Mr Christopher Sykes (3)
(Valuation Officers)

PANEL: Mr. P. Ward (Chairman)
Mrs M. Lane

SITTING AT: The Tribunal offices, Doncaster

ON: 12 October 2016

APPEARANCES: Mr. Ross Bunting (Rapleys - Appellants' representative for 1 and 2)
Mr Nick Crass (Appellant's representative for 3)
Mr Richard Gibson (Valuation Officer's representative)
Mr Paul Allen (Valuation Officer's expert witness)

Summary of Decision(s)

1. The entries are determined as follows;

Blackburn Rovers Academy - £247,000 Rateable Value (RV)

Derby County Training Centre - £247,000 RV

Middlesbrough training ground - £266,000 RV

Introduction

2. The three appeals arose following proposals which challenged the respective compiled list entries. The proposals were served on 2 March 2012 (Blackburn), 30 March 2015 (Derby) and 8 October 2013 (Middlesbrough) respectively. The parties had asked for these appeals to be treated as test cases and be heard together by a panel.
3. All three appeal properties were football training grounds with academy facilities and were built between 1998 and 2003.
4. It was accepted that the appropriate valuation method for valuing these appeal properties was the contractor's test basis. The parties had assisted the panel in agreeing the respective base valuations having regard to this method of valuation.
5. The material date and the effective date for the purposes of these appeals was 1 April 2010.
6. The absence in this decision text of a reference to any statement or item of evidence placed before it by the parties should not be construed as it being overlooked by the panel.

Issue(s) in dispute:

7. The issue in dispute between the parties was whether or not the appellant football clubs should benefit from an ability to pay allowance.

Evidence and Submissions

8. The appellants' representatives' evidence included their skeleton arguments, an analysis of the Valuation Officer's comparable training grounds and sports centres which had seen a change of occupier, the agreed assessments for the respective clubs' stadia showing the ability to pay allowance(s) that had been agreed, photographs and a copy of the Court of Appeal's judgment in *Tomlinson (VO) v Plymouth Argyle Football Co. Limited and Plymouth City Council* [1960] Volume 53 R & I.T. 297.
9. The respondents' bundle included their skeleton arguments, an analysis of the football season 2007/8, comparable training grounds which had had a change of occupier, an extract from Ryde on Rating on ability to pay, location plans and in addition to the Plymouth Argyle case, a copy of the Lands Tribunal's judgment in *Dawkins (VO) v Royal Leamington Spa Borough Council and Warwickshire County Council* [1961] RVR 291.

Decision and Reasons

10. The three appellants were football clubs plying their trade in the FA Premier League during the 2007-08 season. Blackburn Rovers were the highest ranked team amongst the

appellant football clubs as they finished 7th, Middlesbrough finished 13th whilst Derby County finished bottom of the league with the lowest ever points tally for a premier league club, 11. The relevance of the respective finishing positions will become clearer later on.

11. The panel was informed that the three football clubs' stadia were valued having regard to the contractor's test. According to the agreed Football Stadia 2010 valuation scheme, there was a three stage approach.
12. For stage one, the starting point was the build cost of the stadium based on a price per seat derived from analysis of construction cost data. For a new purpose built stadium this varied from a maximum of £120 per seat for a three tier stadium to £50 per seat for a single tier stadium (10,000 seats). For older and piecemeal developed stadia lesser figures are adopted.
13. For stage two, an adjustment is then made for superfluity to reflect the excess size of the stadium. This is achieved by adjusting the build cost from stage one by a factor which is determined by dividing the maximum gate achieved during the period under review by the licensed capacity.
14. The third and final stage is the ability to pay adjustment. Having regard to the Plymouth Argyle case, it was agreed practice to ascertain the fair maintainable trade (FMT) and normally figures provided by Deloitte were used when available. The FMT at the AVD should be used and therefore the starting point will be the income generated during 2007-08 hence the finishing position of the respective football clubs in the Premier League is an important consideration.
15. At the AVD only eight Premier League clubs were operating at a profit, ironically Derby County was one of them despite its poor season. Mr Allen explained that regard must be had to previous years' trading, attendances and league positions but averaging out was not appropriate if a club had moved to a new ground, been relegated or achieved promotion.
16. At the AVD both Blackburn Rovers and Middlesbrough were established Premier League clubs and ability to pay allowances were agreed at 19.47% and 31.4% respectively, having regard to their FMT.
17. Derby County's Premier League season in 2007-08 was abysmal by any standards and the club was effectively relegated by Christmas 2007 as its results were so poor. As this club would be plying its trade in the Championship, where revenue streams would be lower, an ability to pay allowance was agreed at 74.97%.
18. Middlesbrough's Riverside Stadium and Derby County's Pride Park, as it was then known, had similar base valuations reflecting superfluity. Middlesbrough's stadium was valued at £2,277,000 RV whilst Derby's was £2,225,370 RV. Once the ability to pay adjustment of 31.4% was factored into the equation, the entry for Middlesbrough was reduced to £1,560,000 RV and Derby to a mere £550,000 RV for a ground of similar size and specification!
19. In contrast, Blackburn's stadium at Ewood Park had a lower base RV reflecting superfluity at £1,626,300 RV. Once the ability to pay factor and an end allowance of 10% for a defective stand had been factored in, the RV entry for Ewood Park was £1,170,000 RV.

20. The appellants' case succinctly put was the training grounds and academies were inextricably linked to the football stadia they occupied. The FMT of each club could not be achieved without an academy, therefore the existence of it is implicit in the FMT figure. They argued that a modern purpose built training ground and academy site was essential for any football club with premiership aspirations and to maintain that status. There was no alternative hypothetical tenant for the appeal properties. If Blackburn Rovers vacated its Old Langho site and Derby moved out of Moor Farm Training Centre, Mr Bunting argued that no other club or organisation would be in the market for it. Similarly if Middlesbrough vacated its site at Rockcliffe Park, there would be no potential bidders who would be interested in taking on the tenancy. The fact that the appeal properties had been valued having regard to the contractor's test as opposed to a rental basis proved their case. Consequently, the same level of ability to pay allowance that was applicable to the stadium should apply to the training ground and academy site. Therefore the following ability to pay allowances were sought Blackburn (19.4%), Derby (74.97%) and Middlesbrough (31.4%) and the following entries were sought:

Old Langho, Blackburn Rovers - £200,000 RV
Moor Farm, Derby County - £62,000 RV
Rockcliffe Park, Middlesbrough - £182,500 RV

21. On behalf of the respective Valuation Officers, it was accepted that each football club was the only potential occupier for the stadium they occupied, so an ability to pay allowance was justified for the stadia. However, the training grounds and academy sites were somewhat remote from the stadia the clubs occupied. Middlesbrough's training ground in particular was some distance away from the Riverside Stadium in the Darlington countryside. Although it was accepted that the market for a football training ground and academy site would be limited, if one of the appeal properties became vacant and to let, the respondents did not accept that the appellant clubs were the only potential occupiers.
22. Mr Gibson stated that Bury FC had taken over the lease of Manchester City's training ground in Carrington following the latter's recent move to new training facilities nearer to the Etihad Arena. Following Bolton Wanderers' vacation of its Euxton Lane site, due to financial pressures necessitating a move to a more basic facility, Wigan Athletic had moved in. Prior to moving to Carrington, Manchester City occupied training facilities in Platt's Lane, after the first team squad had moved, the site was used by its youth teams. Recently the site has been handed over to Manchester Metropolitan University. Another change of occupier involved Queens Park Rangers (QPR) taking over the lease of Chelsea's former training facility at the Imperial College.
23. Both Mr Bunting and Mr Crass argued that apart from the Chelsea and QPR transaction, the rest of the respondent's comparable evidence referred to in paragraph 22 above was inadmissible because the changes of occupation were events that had occurred after the AVD and after the material day. Therefore, they contended that the panel could not take this evidence into account. It was argued that Bury FC was incapable of affording the market rent for Manchester City's former premises in Carrington. The Premier League club had let the premises out to Bury at a peppercorn rent of £1.
24. The panel decided to follow clerk's advice, given in open tribunal, that the respondent's representative's comparable evidence was admissible. Although there had been a change of occupier, there had been no change in the mode or category of occupation of the hereditament(s) of the properties cited by the respondent for comparable purposes. Consequently, there had been no material change of circumstances that had occurred after 1 April 2010 which would breach paragraph 2 (7) of Schedule 6 to the Local Government

Finance Act 1988. It was merely one football club or organisation using the comparable site(s) for training and sporting activities at the site instead of another. The appellants' representatives' argument that this evidence should be excluded was therefore rejected because it was considered that a change of occupier was not a physical change if the use to which the premises was put remained the same. The respondents' representative was merely attempting to show that, if these facilities become vacant, there are other potential tenants out there.

25. Mr Gibson accepted that a modern purpose built training facility and academy site was a necessity for the appellant clubs. However, he maintained that an ability to pay allowance was inappropriate because the assessments he proposed were modest and represented between around ½% and 2% of the respective club's FMT.
26. Mr Crass assisted the panel by outlining what a modern purpose built training ground and academy site had to offer. The facilities usually included external pitches, some grass, some artificial, they may be flood lit, an internal hall possibly with an indoor pitch, gymnasium. Other accommodation may include offices, medical facilities, cafeteria, changing rooms and a pool. An academy site would also have an educational element to it.
27. In the panel's opinion Mr Gibson hit the nail on the head when he said that a modern training facilities and academy sites are essentially the footballers' workplace. The average footballer would not visit the stadium any more often than the average fan, say every fortnight. However, if a football club had a state of the art training ground and facilities to match the best in the country, it would act as a magnet to impress potential new players into signing for the club.
28. There was no requirement for any of the appellant football clubs to have an academy. However, there was a significant element of kudos attached to having an academy which widened the club's appeal.
29. During the hearing room discussions, it was established that no separate accounts were kept for the appeal properties, it being suggested that any income derived from them was subsumed into the stadium's FMT. The appellants' representatives were unable to advise the panel regarding the level of funding that each club received from the Football Association for its Academy. They were also unable to advise the panel how many academy graduates had successfully graduated to the first team squad for the respective football clubs, although it was accepted that there would have been very few, if any. It was suggested that most footballers were signed on as free agents and transferred from other clubs. It was also unknown if any academy players had been transferred to other academies for a transfer fee.
30. The respondents' argued that the respective football clubs were not the only potential tenant(s) for the appeal properties. The Blackburn Rovers site, if it became vacant, could appeal to Burnley or Preston North End. However, a training facility like this would not be viable for the likes of Accrington Stanley and therefore it could not be considered as a possible tenant. The facility may also appeal to professional rugby clubs or Universities.
31. Similarly, if Derby County vacated its Moor Farm Training Centre, Nottingham Forest may be a potential bidder, as Derby's facilities were superior to Forest's. Notts County and Burton Albion would also be potential bidders, although financial constraints would probably prevent them being able to afford this facility.

32. Out of three appeal properties, Middlesbrough's training facility, if vacated, would probably be the most difficult to let because of its remoteness from other potential tenants. Hartlepool United was a potential bidder but realistically it would never be in a position to afford such a facility. It was understood that Sunderland AFC had its own modern training facility but it was impossible to rule out a bid from a professional rugby club or other sports club or university.
33. Taking all of the above factors into account, although other potential tenants could not be ruled out, realistically Blackburn, Derby and Middlesbrough were the only likely tenants for the appeal properties. However, that did not necessarily mean that an ability to pay allowance was justified.
34. The panel determined that the benefits of having a modern training ground and academy more than outweighed the financial savings of not having one. As the appeal properties were owner occupied, in the recent past all three appellants football clubs had made a business decision to acquire a modern purpose built training and academy facility. The assumption had to be that each club had the necessary finance in place to provide the venture capital to construct the facility and the necessary income stream to finance its expected running costs.
35. There were unquantifiable benefits to having a modern state of the art training facility and academy. In addition to attracting new players, having the right training environment aided improved performances on the pitch and assisted team morale with the provision of an excellent place of work.
36. Although ability to pay allowances had been agreed for the respective stadium assessments, having regard to the fair maintainable trade for each appellant football club, ability to pay allowances had not been conceded for training grounds and academies which were remote from the stadia. The FMT for these football clubs ranged from £42 million (Blackburn), £40 million (Middlesbrough) and £13.75 million in Derby's case. In Derby County's case the figure taken as representative of its FMT was very conservative and reflected its relegation in terms of league status.
37. The parties had referred to the Court of Appeal's judgment in *Tomlinson (VO) v Plymouth Argyle Football Co. Limited and Plymouth City Council* [1960] Volume 53 R & I.T. 297 as the case law precedent for the justification of an ability to pay allowance on the football stadia occupied by the appellants. The appellants sought the same end allowance for the appeal properties. However, having regard to the Court of Appeal's judgment, the facts were that Plymouth rented their Home Park football ground from the local authority. Plymouth historically was a club that was continually in debt and was continually being bailed out by local benefactors and public support to keep it afloat. This was the reason why it was argued that as the only potential bidder, the landlord would have to accept whatever they could afford in the way of rent. The Lands Tribunal had originally determined that the assessment should be £2,250 RV based on the lease rent of £664 plus £1,604 representing a contractor's test valuation on the re-built grandstand, ground improvements and equipment. The Court of Appeal determined that as the football club was the only potential bidder, its ability to pay the hypothetical rent was a factor to be taken into account and the matter was remitted back to the Lands Tribunal to re-determine the RV assessment based on Plymouth Argyle's ability to pay.
38. That judgment has been followed ever since in the assessment of football league stadia. However, the world has moved on since 1960 and as at the antecedent valuation date 1 April 2008, the FA Premier League was in existence, arguably the most popular league in the world, and the clubs within it were benefiting from millions and millions of televised

and sponsorship income as borne out by the FMT figures. Even though Derby County were relegated at the end of season 2007-08 and effectively fell off the gravy train, they still benefited from parachute payments for the first two years in the Championship following relegation.

39. It is well known that football clubs are not run on sound commercial and business lines; the vast majority of a club's income generally goes on the playing budget in terms of players' wages as football clubs often effectively gamble on trying to achieve success and often try to live beyond their financial means. Having regard to the huge amount of money circulating in football at the AVD at premier league level, where the appellant football clubs were playing at the time, as evidenced by the FMT, the panel determined that given the size of the assessments, ability to pay should not have been a factor and therefore no allowance was applicable. The level of each assessment was less than 2% of the calculated FMT and in Blackburn's case it was just 0.56%!
40. In view of the foregoing, the assessments as proposed by Mr Gibson, on behalf of the Valuation Officers were upheld.

Order:

41. Under the provisions of Regulations 38(4) and (9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the respective Valuation Officers to reduce the assessment(s) for the appeal properties as follows;

- (1) The Academy Blackburn Rovers, Brockhall Village, Old Langho, Blackburn BB6 8BB - £247,000 RV
- (2) Moor Farm Training Centre, Morley Road, Oakwood, Derby DE21 4TB - £247,000 RV; and
- (3) Middlesbrough Football & Athletic Company (1986) Ltd, Rockcliffe Park, Hurworth, Darlington, County Durham DL2 2BP - £266,000 RV

The alterations are to take effect from 1 April 2010. The Valuation Officer must comply with this order within two weeks of the date of its making.

Date: 17 October 2016

Appeal Number: 235019317461/538N10, 102525506107/036N10 and 135023188509/539N10