VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; challenge against compiled List entry; pharmacy and premises; accuracy of rateable value; analysis of rent on comparable property; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal allowed in part.

RE: 377 Queslett Road, Birmingham B43 7HB

APPEAL NUMBER: CHG100044405

BETWEEN:	Walkers Pharmacy Ltd	Appellant
	And	
	Mr D Virk (Valuation Officer)	Respondent

PANEL: Mrs AE Fielder (Senior Member)
Mrs A Taylor

CLERK: Miss F Willson

REMOTE HEARING ON: 30 November 2020

APPEARANCES: Mr M Singh (the Appellant)
Mr D Muqbil (on behalf of the Valuation Officer).

Summary of decision

1. Appeal allowed in part. The current entry in the Rating List is to be reduced to £24,250 rateable value (RV) with effect from 1 April 2017.

Introduction

2. The appeal arises from a challenge made by the appellant's representative on 30 August 2018, in respect of 377 Queslett Road, Birmingham B43 7HB (the appeal property). The challenge was in respect of the entry in the rating list at £38,500 RV effective from 1 April 2017. The appellant sought a revised assessment of £20,000 RV with effect from 1 April 2017. After considering the merits of the challenge, the Valuation Officer determined that the RV should be reduced to £32,250 and a decision notice to this effect was issued on 2 January 2020. The appellant made an appeal to this tribunal against that decision notice which was received on 1 June 2020. The appeal was made out of time but permission was granted to appeal out of time on 22 July 2020.

3. The President of the Valuation Tribunal for England (VTE) is required to make sure arrangements are in place and make such statements and Directions so as to ensure that business before the Tribunal is conducted in accordance with The Local Government Finance Act 1988, Schedule 11, Part 1, paragraph A17(1) and The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and by virtue of Part 2 regulation (5) (arrangement for appeals) and regulation (6)(3)(g) (appeal management powers) the VTE may determine the form of any hearing.

4. Therefore, in pursuance of Regulation (6)(3)(g) the VTE has incorporated "remote hearings" as part of that definition and for the time being as the default option until it is safe to return to normal working. The Tribunal's Consolidated Practice Statement has been amended to reflect this.

5. The appeal property is located on a main trunk road leading out of Birmingham but the view of the pharmacy is obscured by mature trees. It has woodland on three sides of the property. It is in a new health centre with a patient list of 9381 patients. The appeal property is 120.34m^2 and has limited parking on site. The appellant holds the property on a long lease which commenced on 17 October 2016 with a rent of £28,500 per annum exclusive of fit out costs and with a six week rent free period.

6. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the evidence presented was fully considered by the panel before coming to its decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

Issue

7. The issue between the parties is the correct RV of the appeal property, with effect from 1 April 2017.

Evidence and submissions

8. Mr Singh submitted a bundle of evidence which included details of the appeal property, the issues in dispute, details of comparable properties and photographs.

9. With reference to his comparable properties and the appeal property he asked the panel to confirm a revised rateable value of £20,000 from 1 April 2017.

10. Mr Muqbil referred the panel to the challenge application and decision.

11. In consideration of his comparable properties and the passing rent, Mr Muqbil asked the panel to confirm the RV of £32,250 with effect from 1 April 2017.

Decision and reasons

12. The appeal hereditament must be valued for the purpose of non-domestic rating on the basis of the rent at which it might reasonably be expected to let from year to year on a number of assumptions (see paragraph 2(1) of Schedule 6 of the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015 (antecedent valuation date or AVD). Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 (material day) for this appeal. When assessing the RV of any property, rating law also requires that the property must be assumed to be 'vacant and to let', and in the state set out in Schedule 6 of paragraph 2(7) of the Act, in relation to both the physical nature of the property and its mode or category of use.

13. Where rental evidence is available, the weight to be attached should be considered in light of the following six propositions set down in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141.

- Where the hereditament which is the subject of consideration is actually let, that rent should be taken as the starting basis.

- The more closely the circumstances under which the rent agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of gross value in
section 19(6) of the General Rate Act 1967 the more weight should be attached to it. (These statutory requirements now contained in Schedule 6, Para 2 (1) Local Government Finance Act 1988 (as amended by the Rating (Valuation) Act 1999)).

- Where rents of similar properties are available, they too are to be properly looked at through the eye of the valuer in order to confirm or otherwise the level of value indicated by the actual rent of the appeal property.

- Assessments of other comparable properties are relevant. When a valuation list is prepared these assessments are to be taken as indicating comparative values estimated by the valuation officer. In subsequent proceedings on that list therefore they can be properly be referred to as giving an indication of that opinion.

- In light of all the evidence an opinion can then be formed of the value of the appeal hereditament, the weight to be attached to the differing types of evidence depending on the one hand the nature of the actual rent and on the other hand, on the degree of comparability found in other properties.

- In those cases where there are no rents available of comparable properties a review of other assessments may be helpful but, in each circumstance, it would be difficult to reject the evidence of the actual rent.

14. Mr Singh submitted that when valuing the appeal property the number of patients at the doctor's surgery attached to that property should be taken into account. He argued that the patients were the potential customers of the pharmacy and therefore the number of patients at each comparable property should in his opinion be reflected in the RV. They would certainly affect the rental bid on the appeal property and therefore the rent.

15. He drew the panel's attention to comparable properties which were all pharmacies attached to health centres and were within a three mile radius of the appeal property:

Address	Size (m^2)	2010 RV	2010 £/m^2	2017 RV	2017 £/m^2	Patient list size
377 Queslett Road	120.34	27,500	250	32,250	300	9,381
192 Reservoir Road	201.5	45,500	225	60,500	300	16,551
452-456 College Road	155.14	35,250	250	24,250	170	11,080
435 Walsall Road	120	36,000	300	36,000	300	17,483
The Oaks	118.6	30,500	250	27,500	225	13,446

16. Mr Singh submitted that all the comparable properties he had listed had more patients on their patient lists and so their potential customer base was larger than the appeal property. The Oaks and 452-456 College Road were the two most comparable properties to the appeal property in his opinion. They were also the nearest geographically to the appeal property.

17. They had a similar size area to the appeal property being 118.6m^2 and 155.14m^2 with the appeal property being 120.34m^2. The base rates used in the 2017 list were £225 per m^2 and £170 per m^2 which was much lower than the £300 per m^2 which was used on the appeal property.

18. The panel put weight on the two comparable properties referred to by Mr Singh as they were similar in size and were the closest to the appeal property.

19. The only two comparable properties that had a base rate of £300 per m^2 the same as the appeal property were within health centres which were double or treble the size of the appeal property with much larger car parks.

20. The panel noted only two of the comparable properties had a base rate of £300 per m^2. The other comparable properties had a base rate of between £170-£225 per m^2.

21. Mr Singh believed that the appeal property should have a lower base rate than that of The Oaks or 452-456 College Road as the appeal property was in a less desirable location.

The appeal property was surrounded on three sides by mature trees and a nature reserve whilst the other two properties were in retail zones with good car parks and were more visible. The two comparable properties were also purpose built to a high specification unlike the appeal property which was a refurbished former office building.

22. The panel put weight on the fact that having a pharmacy situated in a retail zone with a sizeable car park would be a more desirable location than one that had a nature reserve and mature trees surrounding it. It could see that those things would help attract trade to the property.

23. Mr Muqbil referred the panel to the case of *Lotus and Delta* in which the rent passing on the appeal property is the starting point for assessing the RV where such rental evidence exists. In the case of this appeal property the rent was £28,500 per annum from 17 October 2016. The rent was set less than two years after the AVD under a lease in the open market.

24. The rent of £28,500 had then been revised to take account of the fit out costs and the rent free period and an RV of £32,250 was determined to be reasonable. On this basis Mr Muqbil argued that this was the best evidence. The valuer did not need to consider the number on the patient list for the property as this was only used to derive the likely rent for the property where a passing rent was not available.

25. Mr Muqbil referred the panel to the comparable properties and their rent:

   - 192 Reservoir Road, current RV £60,500 and rent per annum £75,837 from 2018.
   - 435 Walsall Road, current RV £36,000 and rent per annum £35,000 from 2014.
   - 452-456 College Road, current RV £24,250 and rent per annum £25,000.

   He submitted that his comparable properties were in the same location and of similar size to the appeal property. The rent supported the RV and in the case of 435 Walsall Road the rent was set only one year before the AVD. He referred the panel to the second type of evidence that should be considered when setting an RV in *Lotus and Delta* which is the rent passing on comparable properties particularly those close to the AVD.

26. Mr Muqbil was asked to explain the reason why the RV and base rates on the comparable properties referred to by Mr Singh were significantly different on each of the properties. He stated that the difference between each of their RV's was due to the rent passing on that property on the AVD.

27. The panel were aware that if one rent had changed substantially this would not be viewed by the valuer as the reason to change the RV on just that one property. An increase in a rent was only one piece of evidence in the basket of evidence used to set an RV. It was necessary to have a tone in the list for particular types of property in particular locations.

28. In the valuation scheme applied to the appeal property the base rate applicable is between £65-£525 per m^2 but dependent on size, location and other physical characteristics. In the case of the appeal property it has a nature reserve around it, it is not in a retail zone and is a refurbished office suite making it a less desirable location than the other comparable properties. All these factors should be taken into account when setting the base rate for the appeal property.

29. The panel held that the comparable properties provided by Mr Singh had a base rate of between £170-£300 per m^2 which demonstrated a large difference. In the panels opinion this showed that a tone had not been set for pharmacies in the location of the appeal property.

30. Having considered both parties' comparable properties, the panel concluded that the RV proposed by Mr Singh of £20,000 was too low. His proposed RV had been calculated using the size of the patient list which is not a method normally used to value pharmacies. The RV of £32,250, the present RV for the appeal property, was unreasonable in the panel's view.

31. The panel put weight on The Oaks as the best comparable evidence. It was only 1.74m^2 smaller, was one of two nearest to the appeal property and had a base rate of £225 per m^2. The panel held that this was a fair and reasonable base rate for the appeal property.

32. The panel found that the RV for the appeal property:

Floor	**Description**	**Area m^2/unit**	**Price per m^2/unit**	**Value**
Ground	Floor sales	90.32	£225	£20,322
Ground	Office	8.67	£157	1,361
Ground	Staff Toilets	3.45	£0	£0
Ground	Staff toilets	2.59	£0	£0
Ground	Mess/staff room	7.79	£112	£872
Ground	Office	7.52	£157	£1,181
Total		**120.34**		**£23,736**
Air conditioning		90.32	£7.00	£632
Total Value				**£24,368**
Say				**£24,250**

33. The appeal is therefore allowed in part.

Order

34. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry to £24,250 with effect from 1 April 2017 within two weeks of the date

of this order. The ratepayer is also entitled to a refund in full of the appeal fee paid in accordance with regulation 13E (1)(a) of the Non Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009.

Date: 18 December 2020

Appeal number: CHG100044405