VALUATION TRIBUNAL FOR ENGLAND

Non Domestic Rating Appeal; Lotus and Delta v Culverwell (VO) LVC/376/1975; Telereal Trillium v Hewitt (Valuation Officer) [2019] UKSC 23, shop and premises; rental evidence; Appeal allowed in part.

RE: Ground Floor, 20-21 High Street, Kidderminster, DY10 2DJ

APPEAL NUMBER: CHG100051016

BETWEEN:	Ballcroft Estates Ltd (Represented by Simon Alexander Consulting Ltd)	Appellant
	and	Respondent
	Mr D Virk (Valuation Officer)	

BEFORE: Ms M Fagborun-Bennett (Senior Member in the chair)
Mr AV Clark (Vice President)

CLERK: Mrs K Clewer

REMOTE HEARING:

ON: 8 January 2021

APPEARANCES: Mr S Wanderer of Simon Alexander Consulting Ltd (Appellant's representative)
Mr D Byrne (Valuation Officer's representative)

Summary of Decision

1. Appeal allowed in part.

Introduction

2. This appeal has been brought in respect of the following: Ground Floor, 20-21 High Street, Kidderminster, DY10 2DJ (the ‘appeal property’), which was entered in the 2017 rating list as ‘shop and premises’ at rateable value £92,000 effective from 1 April 2017. In total (including basement storage) the property measured 1,616.89 m^2. The area was not in dispute.

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. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, Mr Wanderer made an appeal to this Tribunal because he disagreed with the current rateable value. The appeal to this Tribunal has been made on the grounds that the valuation for the appeal property is not reasonable.

6. This is a compiled list appeal so the material day is 1 April 2017. The appeal to this Tribunal was made on 15 May 2020 following the Valuation Officer’s Decision Notice of 10 March 2020 in respect of the appeal property (hereditament).

7. The Appellant’s representative, Mr Wanderer, when appearing as expert witness, had declared at a previous adjourned hearing of the appeal that his firm would receive a conditional fee or some other success related arrangement if the rateable value were to be reduced as a result of the panel’s decision.

8. However, he had also declared that he understood and accepted that his duty is to the Tribunal in giving his evidence and that he would comply with this as well as the requirements of his professional body regardless of whether or not the evidence supported his client’s case.

9. The panel accepted the expert witness evidence on the above basis as the appeal is not complex and to do otherwise would be contrary to Regulation 3 (Discharge of VTE functions – general) of the Procedure Regulations and is allowable due to the Tribunal’s rules on admissibility of evidence (Regulation 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial).

10. The panel hearing the evidence thus considered the “expert” evidence and assessed what weight, if any, it should give to it in the context of the matters in issue before it.

11. The absence in this decision 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.

12. Following an adjourned hearing of this appeal on the 26 October 2020 in which new evidence had been allowed under regulation 17A of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (SI 2009/2269) further evidence had been provided by both parties following written agreement. On the day of the re-convened hearing Mr Wanderer provided further information in respect of a comparable property at 1-6 St Georges Mall (B&M) regarding dilapidations. Mr Byrne whilst objecting to the late submission of this evidence stated that he had no objection to its inclusion. The panel, therefore, waived the requirement for the agreement to be in writing under Regulation 9 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (SI 2009/2269).

Issue

13. The issue for determination is the rateable value of the appeal property.

Evidence and submissions

14. The Appellant’s representative had provided the Tribunal with both parties submissions. The evidence included the following: his statement of case, a copy of the challenge proposal, the Valuation Office Agency’s decision notice, copies of correspondence that had passed between the parties, photographs of the appeal property, a copy of two asbestos surveys for the appeal property, a copy of the lease dated 6 June 2016 and letting particulars for 1 Worcester Street, Kidderminster. The further evidence provided was the lease details of Store 3, The Swan Centre, Kidderminster (B&M) along with confirmation of information provided on the Form of Return (FOR) and the lease of Wilkinson’s at premises in Market Street/Oxford Street Kidderminster.

15. Mr Wanderer had adjusted the rent of the appeal property and the B&M comparable property both of which had resulted in a negative rent. This, he contended, proved the appeal property to be worthless. He, therefore, argued that the rateable value should be nil and asked the panel to allow the appeal in full.

16. The Valuation Officer contended that, based on the assessments for neighbouring properties, the rateable value for the appeal property was correct and he asked the panel to dismiss the appeal.

Decision and reasons

17. The task for the panel was to determine the rateable value for the appeal property, which represented a rent that a hypothetical landlord and tenant would agree, as at the antecedent valuation date (AVD),1 April 2015. The common date was used to ensure that every property was treated in a consistent way; otherwise similar properties would have different rateable values if numerous dates were used, as rental values fluctuated over time.

18. The term ‘rateable value’ is defined in Schedule 6 to the Local Government Finance Act 1988 (as amended):

> “The rateable value of a non-domestic hereditament (none of which consists of domestic property and none of which is exempt from local 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”

19. The Lands Tribunal judgment in *Lotus and Delta v Culverwell (VO)* LVC/376/1975 provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the appeal property was considered to be the correct starting point but, where available, rents on similar properties were also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.

20. Mr Wanderer argued that the appeal property had no value as there was no demand for large shops. As an incentive for the tenant, the landlord agreed to pay the business rates and he adjusted the rent as follows:

	2012	2016
Headline rent for entire property	£70,000.00	£70,000.00
Less rent for first and second floors (adjusted by rateable value)	£22,250.00	£22,250.00
Less business rate liability for ground floor	£55,876.00	£60,634.00
Less business rate liability for first floor	£10,190.50	£11,058.25
Less insurance	£4,000.00	£4,500.00
True rental value	-£22,316.50	-£28,442.25

21. Based on this analysis of the rent which resulted in a negative rent, Mr Wanderer argued that the rateable value should be nil.

22. To support his contention that the rateable value was correct, Mr Byrne provided details of his comparable properties. These were:

Property	Area	Rent	Rateable value
1 – 6 Sir Georges Mall, Swan Centre	1,709m^2	£100,000	£64,500
Part Ground Floor and First Floor, 1 High Street	207.15m^2	£60,000	£51,000
Wilkinson hardware, Market Street	3,414m^2	£225,000	£221,000
Ground Floor, Part First Floor and Second Floor, 2-6 Worcester Street	2,273m^2	£140,000	£99,500

23. In addition to the above, Mr Byrne contended that the price per m^2 for 1 Worcester Street and 3 – 6 Coventry Street at £38pm^2 and £36pm^2 respectively, also supported his contention that the rateable value was correct.

24. The panel concluded that although the adjustments made by Mr Wanderer produced a rent on the appeal property which was negative this rent did not conform with the rating hypothesis and as such little weight could be attached to it.

25. The parties had referred to the Supreme Court judgement of *Telereal Trillium* v *Hewitt (Valuation Officer)* [2019] UKSC 23 during their respective submissions and questioning. The panel also considered this case to be helpful in determining the appeal. Lord Carnwath having stated at paragraph 58 of the judgement:-

"58. This important distinction seems with respect to have been overlooked by Henderson LJ when he said:
"In a saturated market, there is still a proper basis for a substantial rateable value while the existing tenant remains in occupation and pays a substantial rent for the hereditament; but that situation changes once the property becomes vacant, because there is no longer a potential tenant available to take it on the statutory terms required by the rating hypothesis." (para 43)

Whether the hereditament is occupied or unoccupied, or an actual tenant has been identified, at the relevant date is not critical. Even in a "saturated" market the rating hypothesis assumes a willing tenant, and by implication one who is sufficiently interested to enter into negotiations to agree a rent on the statutory basis. As to the level of that rent, there is no reason why, in the absence of other material evidence, it should not be assessed by reference to "general demand" derived from "occupation of other office properties with similar characteristics".

26. The panel, therefore, had to approach the appeal from the view of a hypothetical tenant and despite the size of the appeal property did not consider it feasible that a tenant willing to pay a rent could not be found. It appeared that there was demand for shops in Kidderminster and that Mr Wanderer's contention for a nil rateable value was not supported.

27. 1-6 St Georges Mall (B&M) had been let in 2015 at a rent of £100,000 per annum for a three year term. Mr Wanderer had analysed this rent to a negative value given the adjustments required for the 15 month rent free and service charge free period, 75% of the insurance only being paid by the tenant and the agreement to forego the dilapidations clause estimated to be £255,000. Mr Byrne had analysed this rent to £58.51 and whilst he accepted some further adjustments would be necessary due to the decision to revoke the dilapidations clause, he stated that the figure of £255,000 was only an estimate.

28. 3-6 Coventry Street (Poundland) had been let in 2013 at a rent of £80,000 per annum. Mr Wanderer had analysed this rent to a negative value if the service charge was taken at £5 per m^2 and to £7.80 per m^2 if the service charge was taken at £2 per m^2. Adjustments had also been made for the exclusivity clause and the rent review cap. Mr Byrne stated that due to the adjustments required to the rent this was not a good rent but stated that this property was valued at a rate of £38 pm^2.

29. The panel acknowledged Mr Wanderer's reference to the case of *Lamb* v *Go Outdoors Ltd* [2015] UKUT 0366 (LC) and the necessity to consider all rents available despite adjustments being required. However, the panel was of the opinion that the rents provided by the parties and their respective analysis of them were not in line with the rating hypothesis and the adjustments to be made were too excessive to consider them useful.

30. 1 Worcester Street was on the market to let. A letting had been agreed in 2017 at a rent of £90,000 on a rates inclusive basis. Mr Wanderer stated that as the rates equated to more than the rent this too was a negative value rent. However, this letting did not proceed so little weight could be attached to it.

31. Wilkinson Hardware, Market Street, Kidderminster had been let in July 2012 for £225,000 per annum. Mr Byrne had analysed this rent to £65.89 per m^2. This was a significantly larger property measuring 3,414m^2. The panel attached little weight to it given its size and the rent agreed was too far removed from the AVD to be of assistance.

32. Given the unreliability of the rents provided the panel considered the values applied to the comparable properties for assistance in determining the appeal.

33. Part Ground and first floor 1 High Street Kidderminster (BHF) had been let at a rent of £60,000pa with effect from July 2014 with one year rent free. This had been valued on a zonal basis at £275 per m^2 (Zone A). Whilst a similar size to the appeal property at 1,533m^2 overall the size in terms of m^2 was stated as 207.15. The panel did not find this property to be a good comparable due to the alternative valuation method used.

34. Of the comparable properties provided the panel attached the greatest weight to 1-6 St Georges Mall (B&M) this being a very similar size to the appeal property at 1,709 m^2. It was also within close proximity to the appeal property albeit not in the pedestrianised zone. This had been valued at £38 per m^2.

35. 3-6 Coventry Street was also given significant weight being 1,841.2m^2 in size and again within close proximity to the appeal property. This had also been valued at £38 per m^2.

36. The panel considered it fair and reasonable for the appeal property to be valued at the same rate as these two preferred comparable properties. It, therefore, determined that an overall rate of £38 per m^2 should be applied (adjusted for the basement storage area)

37. The panel could not attach any weight to the asbestos report provided by Mr Wanderer as no explanation as to its relevance was argued before it.

38. Having considered the air conditioning report provided the panel was of the opinion that the air conditioning was obsolete and unusable at the material day. Therefore, it determined that this element of the valuation should be removed from the assessment.

39. In conclusion the panel valued the appeal property at £38 per m^2 as follows:

Floor	Description	Area m^2/unit	Price m^2	Value
Ground	Ground floor sales	1,386.19	£38.00	52,675
Basement	Internal Storage	230.7	£19.00	4,383
Total				57,058

RV say £57,000

Order

40. Under the provisions of regulation 38(4) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to alter the appeal property's entry in the 2017 Rating List to £57,000 RV with effect from 1 April 2017.

41. Under regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

Refund of appeal fees

42. A refund of the paid fee will now be arranged (Regulation 13E of the NDR Alteration of Lists & Appeals Regulations) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

Date: 15 January 2021
Appeal number: CHG100051016