THE VALUATION TRIBUNAL FOR ENGLAND

*Non-domestic rating appeal; 2017 rating list; Challenge against Compiled List entry; Shop and Premises; accuracy of rateable value; rental and comparable evidence considered; found that weight of evidence did not support a reduction in the assessment of subject property; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; Appeal dismissed.*

RE: 42 Upper Street, London, N1 0PN

APPEAL NUMBER: CHG100060078

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| BETWEEN: | Flight Centre UK Ltd<br>(Represented by Altus Group) | Appellant |
| | and | |
| | Mr D Jackson<br>(Valuation Officer) | Respondent |

BEFORE: Mr A Backway (Senior Member)
Ms J Morton

CLERK: Ms R Muller

REMOTE HEARING ON: Monday 30 November 2020

APPEARANCES: Mr J McCarthy, Representative of the Appellant

Mr C Cates, Representative of the Respondent

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**Summary of decision**

1. Appeal dismissed. The rateable value (RV) of the appeal property was confirmed at £127,000 with effect from 1 April 20017.

**Introduction**

2. This was a 2017 compiled rating list appeal. The assessment of the subject property was £127,000 RV, with effect from 1 April 2017 and described as shop and premises. For this appeal, matters that affect the physical state or enjoyment of the property or the locality were to be taken as at the material day, which was 1 April 2017.

3. A check had been completed on 29 October 2018 and a challenge submitted on 22 November 2018. The challenge stage was completed on 19 May 2020 with no change to the RV of the subject property. An appeal was received by the Tribunal on 19 August 2020, made on the grounds that the valuation for the hereditament is not reasonable.

4. Mr McCarthy appeared on behalf of the Appellant as both surveyor-advocate and expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr McCarthy's declaration of truth included a statement that he was instructed on a contingency fee basis. He declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and he would comply with this as well as the requirements of his professional body, regardless of whether or not the evidence supported the client's case.

5. The panel accepted this expert witness evidence on the above basis as the appeal was not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure regulations, and was 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). The panel therefore considered the expert evidence and attached such weight to it as it saw fit.

6. The subject property was a retail shop on the ground floor of a residential building, situated within the lower end of a parade of shops on Upper Street. The area of the subject property was agreed by the parties to be 60.55m² in terms of Zone A (ITZA).

7. 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.

8. 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.

9. This document is not intended as a verbatim report of the proceedings nor is it proposed to reproduce in full all of the parties' evidence. 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 an indication that that statement or item of evidence has been overlooked by the panel.

**Issue**

10. The issue between the parties concerned the RV of the appeal property and specifically, the rate per m² that should apply.

**Evidence and submissions**

11. At the hearing Mr McCarthy, the representative for the Appellant, sought a reduction to £97,000 RV based on an unadjusted base rate of £1,600/m² ITZA. Mr Cates, the representative for the Valuation Officer (VO), sought to defend the existing assessment of £127,000 RV, which was based on the existing unadjusted base rate of £2,100/m² ITZA and requested that the appeal be dismissed.

**Decision and reasons**

12. The subject property 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. In his challenge, Mr McCarthy had given details of the rent passing on the subject property, which was £105,750 per annum (p.a.) effective from 25 June 2014 and related to a ten-year lease with a five yearly review. He stated that there had been a six months rent-free period, of which Mr McCarthy stated three months had possibly been for fit-out. Mr McCarthy had analysed this rent to £1,659/m² ITZA which he argued indicated that the adopted rate of £2,100/m² ITZA was excessive and should be reduced.

14. In line with the decision in *Lotus and Delta v Culverwell (VO)* [1976] RA 141, Mr McCarthy suggested that the rent on the subject property should be taken as a starting point, and the rent of comparable properties in the locality should also be given weight. The basket of evidence, which included the rent on the subject property and the comparable property of 40 Upper Street, was in his opinion, indicative of a base rate of £1,600/m² ITZA for the subject property.

15. The comparable property provided by Mr McCarthy of 40 Upper Street was a new letting at a headline rent of £115,000 p.a. which commenced on 23 March 2015. This property had an area of 73.13m² and there had been a six months rent-free period of which Mr McCarthy stated three months had possibly been for fit-out. Mr McCarthy had analysed this rent at £1,414/m² ITZA. However, the panel placed little weight on this comparable property, as it noted that 40 Upper Street had an unusual stepped rent where the first and third years had been set at £115,000 and the second year's rent had been set at £57,500 therefore, not a typical standard lease.

16. Mr McCarthy stated that the shops on the parade of Upper Street were numbered from 19 to 57, the subject property was number 42. The panel noted that the parade of shops on Upper Street were separated by a junction and that the subject property was located close to the junction that separated the two parades of shops on Upper Street. Most of the retail shops along Upper Street were valued at £2,100/m² ITZA based on the evidence available to the Respondent. Mr McCarthy was of the opinion that the retail shops nearest the Angel Station and the Angel Central Shopping Centre had more value and that the values should be phased down going away from the Angel Station and the Angel Central Shopping Centre towards the junction.

17. In support of his statement, he referred to 56 Upper Street, where the Zone A value had been agreed at £1,550/m² ITZA. The panel noted from the location map that 56 Upper Street was situated at the beginning of the next parade along Upper Street, where the junction separated it from the subject property. No rental details or reasons why the Zone A price had been agreed at a much lower value had been provided with regards to this comparable property.

18. Mr Cates had provided details of two comparable retail properties in Upper Street to support the existing rate for the subject property, where both had achieved a rent close to the AVD of 1 April 2015. The first comparable property was 29 Upper Street which had let on 11 March 2015 at £76,000 p.a. as a new letting for a period of 10 years. This property had an area of 34.54m² and had a 5 yearly review and four months rent-free period of which three months had been assumed as a fit-out period. The landlord was responsible for external repairs; therefore, a 5% allowance had been made for this adjustment. This rent had been analysed at £2,003.23/m² ITZA.

19. The second comparable property was Basement, Ground Floor and First 23-24 Upper Street, which had been a lease renewal, set on 25 March 2015 at a rent of £190,000 p.a. for a period of five years on full repairing and insuring terms (FRI). This property had an area of 34.54m² and had analysed at £2,460.50/m² ITZA.

20. The panel considered that the rental evidence provided by both parties did not, as asserted by Mr Cates indicate that higher rents were being achieved towards the end of Upper Street, towards the vicinity of the Angel Station and Angel Central Shopping Centre. Whilst the analysed rent of £1,659/m² ITZA on the subject property would appear to support a reduction, this was low compared to that of 23-24 Upper Street and 29 Upper Street: rents had been agreed in March 2015 and had analysed at £2,003/m² ITZA and £2,460/m² ITZA respectively. As those rents were closer to the AVD of 1 April 2015, the panel attached more weight to them, than the rent of the subject property, which had been agreed in June 2014.

21. The panel was therefore of the opinion that the rate of £2,100/$m^2$ adopted by Mr Cates supported his contention that the Zone A value of the subject property was fair and reasonable.

22. The appeal was therefore dismissed.

**Date:** 10 December 2020

**Appeal number:** CHG100060078