THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating; 2017 Rating List; Offices and premises; Price per square metre; Rental evidence/assessment of comparable properties; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal dismissed

RE: 180 Hutton Road, Shenfield, Brentwood, Essex, CM15 8NR

APPEAL NUMBER: CHG100069536

BETWEEN:	Goldex Investments Essex Limited T/A Costa Coffee	Appellant
	and	
	Mrs J Moore (Valuation Officer)	Respondent

PANEL: Mrs AE Fielder (Senior Member)
Mrs LM Stuart

CLERK: Miss K Hendry IRRV (Tech)

REMOTE HEARING on Monday 8 March 2021

APPEARANCES: Mr P Emerick of Altus Group acting as advocate for the Appellant.
Mr C Strong of Altus Group acting as expert witness for the Appellant.
Mr D Walker for the Valuation Officer

Summary of decision

1. The appeal was dismissed and the appeal property's assessment remained unaltered at £53,000 Rateable Value (RV), with effect from 1 April 2017.

Introduction

2. This was a 2017 rating list appeal made following the Valuation Officer's Challenge Case Decision Notice completed on 17 June 2020. The property had been entered in the 2017 rating list with a rateable value of £55,000 with effect from 1 April 2017 as shop and premises. Following the check and challenge requests made by the appellant, the Valuation Officer revised the rateable value to £53,000.

3. The appellant’s challenge proposal to the Valuation Officer was made on 27 August 2019. The Valuation Officer issued a challenge decision on 1 July 2020 which stated that the rating list entry was considered to be reasonable, and therefore there would be no amendment made. The appellant’s appeal to the Valuation Tribunal for England (VTE) was received on 30 October 2020 and made on the grounds that the Rateable Value is excessive.

4. 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.

5. 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.

6. Mr Emerick appeared on behalf of the appellant as advocate and Mr Strong as expert witness. In view of the Upper Tribunal’s judgment in *Gardiner & Theobald LLP v David Jackson* (VO) [2018] UKUT 0253 (LC), Mr Strong’s declaration of truth included a statement that he was instructed under a conditional fee arrangement. 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.

7. The panel accepted this 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). The panel therefore considered the “expert” evidence and attached such weight to it as it saw fit.

8. 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 evidence, should not be construed as it having been overlooked.

Preliminary issue

9. The appeal was previously adjourned from 11 January 2020 after the appellant’s representative provided details of the rent for the appeal property between 2015 and 2017. Mr Walker requested an adjournment to be able to consider this evidence. The rent was held over from the previous lease. Mr Walker confirmed he had no objection to that evidence being included at this hearing despite the late notification outside the regulations.

10. Secondly, the appellant’s representative submitted additional evidence. This consisted of a schedule of evidence which was included in the Valuation Officer’s rental schedule as part of the initial decision, which Mr Walker was happy to be included. However the rent on 21 Hutton Road was not part of the original discussions or part of the Forms of Return. Mr

Walker asked the panel for this rent not to be included in consideration of this appeal. The property is somewhat removed from the appeal property. The argument was not put forward in the appellant's submissions and the rent was only disclosed as part of the appeal documentation.

11. Mr Emerick confirmed that he had no objections to the rent on 21 Hutton Road being excluded from the hearing. He agreed that the property was some distance from the appeal property, and he was relying on other properties within closer proximity to the appeal property.

12. Mr Strong, as expert witness confirmed he had no objection either to the rent on 21 Hutton Road being excluded from the hearing.

13. The panel confirmed that as the parties were in agreement with regard to the late evidence for the held over rent and schedule of rent then that evidence would be included. The rent on 21 Hutton Road was excluded from the proceedings.

Issue

14. The issue between the parties concerned the rateable value of the appeal property and, specifically, the rate per m^2 that should apply. Mr Emerick, for the appellant, sought a reduction to £43,500 based on an unadjusted rate of £550/m^2 zone A. Mr Walker for the VO proposed a rateable value of £53,000, which was based on an unadjusted rate of £670/m^2 zone A.

Evidence and submissions

15. The appellant's representative, Mr Emerick had provided the Tribunal with both parties' submissions. Mr Emerick confirmed that Mr Strong had inspected the appeal property. He explained that there was no factual disputes for this appeal. There is an agreed end allowance for non-standard frontage of 7.5% which is not in dispute.

16. Mr Emerick stated that the lease came to an end in 2015 and the passing rent at that time was £42,500. The lease renewal was at a slightly higher rent. Confirmation was received by the appellant that they had held over and the landlord had not applied for an interim rent in the intervening period of 2015 to 2017. The lease was then renewed in 2017.

17. The rateable value had already been reduced by the Valuation Officer from the initial challenge from £55,000 to £53,000. Mr Emerick stated that the rateable value can be determined using the rent from the appeal property as at the antecedent valuation date (AVD) of 1 April 2015 and also other evidence from nearby properties, mainly, 170, 168, 194, 232 and 228 Hutton Road.

18. Mr Strong's valuation is based on a revised tone of £550/m^2 zone A which equates to a rateable value of £43,500. Mr Strong also referred to tone reductions on the other side of the street. Mr Emerick referred to the lease on the property and that it included some onerous obligations regarding statutory compliance and no exclusion for the appellant to pay capital taxes.

19. Mr Emerick referred to the Lands Tribunal decision of *Lotus and Delta Ltd v Culverwell (Valuation Officer) and Leicester City Council* [1976] LT RA 141 which stated that the passing rent on the appeal property is always the best starting point, and felt that this case

was particularly relevant to this appeal. He also referred to *Oldschool & Oldschool v Coll* (VO) (1995) RA/312/1994 and expressed that the burden of proof rests with the Valuation Officer who shall not undermine the appellant's case, the objective is to get the correct assessment.

20. Mr Strong as expert witness referred to the following evidence:

a) The appeal property is located within Shenfield, just outside Brentwood. Hutton Road is the prime retail parade within Shenfield. The appeal property is located in the prime even stretch of the parade situated on an end of terrace retail unit trading as a Costa Coffee franchisee. The appealed rateable value of £53,000 was based upon an unadjusted main space price of £700/m^2.

b) The proposed revised rateable value of £43,500 is reasonable based upon a number of factors. Firstly the appeal property rent which is an at arm's length lease renewal from March 2017 where Goldex agreed the rent in the following steps:

- Years 1-3 at £45,000p.a
- Years 3 – 10 at £47,500p.a

This rent is analysed at £46,750 which equates to £550/m^2 rounded.

c) The appellant's previous lease ended in 2015. The years between the lease expiry and the lease renewal agreement in 2017, they continued to pay £42,500 as the landlord did not seek an interim rent. Despite the rental growth between 2015 and 2017 the analysed rent of £46,750 is still lower than the rateable value which indicates that the current price per square metre is excessive.

d) Mr Strong referred to comparable agreements on odd numbered properties which were directly opposite the appeal property. He confirmed that Altus Group represent various other occupiers between 65 and 83 Hutton Road and in March 2019 a reduction in the price per square metre was agreed from £750/m^2 to £625/m^2.

e) Since the 2005 rating list, the odd numbered units between 65 and 83 have always attracted a higher value than the appeal property in the rating list as the railway station is located on the same side of the road.
The even numbers are located on the other side.

f) In 2005 the odd numbered units were valued at £530/m^2 and the appeal property at £435/m^2 which is an 18% difference. In 2010 the odds were valued at £600/m^2 and the appeal property at £550/m^2, which is an 8% difference. In 2017, prior to the successful challenges have seen the odds valued at £750/m^2 and the appeal property is valued at £700/m^2, which is a 6% difference. Mr Strong stated that the historic approach of applying a greater value to the odd side of Hutton Road to be correct.

g) If the appeal is allowed at £550/m^2 then it will reinstate a 12% difference in the values. The difference in value is supported by the appeal rent.

h) The Valuation Officer has provided three rents concerning the appeal property tone. These are 194 Hutton Road which is 50% of the size in terms of zone A (ITZA), 228 Hutton Road which is 50% of the size ITZA and 232 Hutton Road which is 60% of the size ITZA. Smaller retail units generally devalue to larger prices per square meter given a greater proportion is zone A.

i) The rent at 194 Hutton Road is dated within three months of the Antecedent Valuation Date (AVD) of 1 April 2015 and is considered to be useful evidence. Mr Strong stated that in his expert opinion he does not consider the rent on 228 or 232 to be useful as there is better evidence available. 194 Hutton Road is the only rent provided from the prime even units which support the price of £670/m^2. The occupiers of 194 Hutton Road are Altus Group clients, and Mr Strong stated that having inspected this property the ITZA for 194 is incorrect, and therefore this has an impact on the analysed tone.

j) Mr Strong also referred to numbers, 168, 170, 184, 188 and 196 Hutton Road which varied between £450/m^2 and £700/m^2. The evidence from 184 Hutton Road was freehold so there was no evidence to support that rate. 166, 168, 170 and 188 Hutton Road were all valued at £450/m^2, whereas 184 and196 were valued at £700/m^2. These properties were located within a few doors either side of the appeal property.

k) The appeal rent, the comparable properties and the rent on 194 Hutton Road supports a reduced rate of £550/m^2, rateable value of £43,500.

21. To support the rateable value in the 2017 list, Mr Walker acting as advocate and expert witness relied upon the following evidence:

a) Mr Walker confirmed he had not inspected the property formally but has been into the shop on a regular basis so is aware of the internal aspects of the property.

b) The rental evidence that has been provided indicates that the valuation of the appeal property is fair and reasonable. The appeal property is situated in a busy retail area of Shenfield. Although it is close to Shenfield station the residents of the immediate affluent areas of Hutton Mount, Shenfield, and South Brentwood all use these parades on a regular basis and therefore customer footfall is not just commuter driven. The VO rental evidence on 238 and 232 Hutton Road which are opposite and nearest to the station are valued on a lower basis.

c) The appeal property is closer to the heart of the retail area, in a good position for trade and therefore is valued on the basis of £670/m^2.

d) The appeal property rent has been outlined by Mr Strong. However a held over lease and a subsequent new letting over two years after AVD is not the best evidence. The principle in *Lotus and Delta* was that the rent should be starting point. A held over lease based on open market value agreed in 2007 and then a lease renewal granted two years after AVD on 24 May 2017 is not the best reliable evidence of open market value. A new letting or a rent agreed close to AVD should hold greater weight.

e) The new letting and a passing rent of £25,500 for 194 Hutton Road which was agreed with a ten year lease is the best evidence of open market value as it was agreed three months after AVD. This rent analyses at £673.58/m^2 reflecting shared repair liability and a two month rent free period for fitting out. This rent supports the rate of £670/m^2.

f) The parade itself would need to be revalued should the panel agree with the appellant and this would be disregarding the most compelling AVD evidence.

g) The appellant's comparable properties 81 and 83 Hutton Road were reduced following settlement on 65 Hutton Road. The reduction to £625/m^2 was supported by a new lease on 77 Hutton Road and the matrix being changed for the parade of shops from 65-83 Hutton Road. The appeal property is not part of this parade of shops or positioned on the same side of the road.

Decision and reasons

22. 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".

23. In respect of all entries in the 2017 rating list, the Rating Lists (Valuation Date) (England) Order 2014 requires the rental levels to be taken as at 1 April 2015, the AVD.

24. The parties had referred to the Lands Tribunal decision in *Lotus and Delta* which provided guidance on the weight to be attached to rental and assessment evidence. The rent was considered the starting point and more weight was attached to those rents closest to the statutory criteria of rateable value and which were agreed closest to the AVD. Other rents were also considered in order to confirm or otherwise the level of value indicated by the actual rent of the appeal property. Other comparable assessments were also relevant but to a lesser degree. In light of all the evidence an opinion could be formed on the rental value of the appeal property, the weight to be attributed to the different types of evidence depending on one hand on the nature of the actual rent and, on the other hand, the degree of comparability found in other properties. In those cases where there were no rents available for comparison, a review of other assessments may be helpful, but in such circumstances it would clearly be more difficult to reject the evidence provided by the actual rent.

25. The rent in respect of the appeal property was a held over lease based on open market value agreed in 2007 and then a lease renewal granted two years after AVD on 24 May 2017. The panel considered the rental evidence in respect of the appeal property not to be very useful on this basis, and the fact that the lease renewal was two years post AVD and therefore placed very little weight on the rent.

26. Having regard to the comparable properties, the panel considered that the best evidence was the rent of 194 Hutton Road which analysed at £673.58/m^2. This rent was agreed only three months after AVD and the property is only situated three doors down from the appeal property on the same side of the road in the heart of the shopping parade.

27. Whilst Mr Strong expressed that this rent had been analysed incorrectly due to the Valuation Officer having the incorrect ITZA, no evidence was put forward to support this.

28. The panel placed little weight on the appellant’s comparable properties of 81 – 83 Hutton Road which were reduced following a settlement on 65 Hutton Road, which was supported by a new lease on 77 Hutton Road as they were not on the same side of the road as the appeal property.

29. In light of all the evidence, the panel decided that the rental evidence on comparable property 194 Hutton Road was the most persuasive, given the proximity of the rent to the AVD, the panel held that the unadjusted price of £670/m^2 was supported by this rent. The panel was satisfied that the Valuation Officer’s valuation of the appeal property was reasonable.

30. Accordingly, the appeal fails and must be dismissed.

Date: 17 March 2021

Appeal number: CHG100069536