VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; Shop and Premises; accuracy of rateable value in list; rental and comparable evidence considered; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141. Decision: Appeal dismissed.

RE: 97-99 Winner Street, Paignton, TQ3 3BP

APPEAL NUMBER: CHG100071039

BETWEEN:	Namulas Pensions Trustees Ltd	Appellant
and	Valuation Officer	Respondent

PANEL: Mr F Stuart (Senior Member)
Ms R Punia

CLERK: Mr D Jefferies

REMOTE HEARING ON: 9 November 2020

APPEARANCES: Mr K Davidson for the Valuation Officer

Summary of decision

1. Appeal dismissed. The existing valuation is not unreasonable and the entry in the rating list is confirmed at £8,700 rateable value (RV) with effect from 1 April 2017.

Introduction

2. Mr C Mills, for Namulas Pensions Trustees Ltd, consented to a hearing in his absence.

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 before the panel was a 2017 Rating List appeal. The Rateable Value (RV) of the appeal hereditament was originally £10,750 from 1 April 2017, with a description of Shop and Premises. This was a compiled list appeal, so the material day was also 1 April 2017. At the challenge stage the Valuation Office Agency (VOA) reduced the RV to £8,700 and altered the rating list with effect from 1 April 2017. The appeal was made on 16 April 2020 against the Valuation Officer's (VO) Decision Notice of 29 January 2020 in respect of the appeal property and the RV of £8,700. The VO's decision was to treat the appellant's proposal as not well founded and the entry of £8,700 RV was deemed as correct. The proposed RV sought by the appellant was £5,000.

6. The subject hereditament comprises a corner retail shop in Winner Street, Paignton. The property has been assessed In Terms of Zone A (ITZA) at a rate of £105/m^2.

7. Prior to the hearing Mr Mills had sought to include new evidence which had not been included at the challenge stage in the form of extracts from a valuation report. The respondent objected to the inclusion of this evidence. The appellant's application was considered by the Senior Member, Mr Stuart, prior to the hearing and he had determined that the new evidence should be excluded. Both parties were informed of the Senior Member's decision to exclude this new evidence. It was not therefore considered by the panel in reaching its decision in this case.

8. 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 the panel by the parties should not be construed as an indication that that statement or item of evidence has been overlooked by the panel.

Issue

9. The issue between the parties concerned the RV of the appeal property. Mr Mills sought a reduction to £5,000 RV. Mr Davidson, for the VO, defended the existing RV of £8,700, which was based on £105/m^2 ITZA, having been reduced from £130/m^2, and sought dismissal of the appeal.

10. All relevant factual information was not disputed by the parties.

Decision and reasons

11. 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.

12. Mr Mills had submitted that the business rates valuation for 97-99 Winner Street should be based on the actual rent achievable at the premises. He provided the panel with the details of the subject property's rent at £5,496 per annum which was effective from 24 September 2015. He argued that the VOA give no good reason as to why the actual rent on the subject property should not be accepted as the true open market rental value at the AVD of 1 April 2015. Mr Mills contended that the VOA has ignored the realities of the economic situation affecting the area and created a fictitious scenario which does not consider what is actually happening in real life. He believed that the rating list should be reduced to £5,000 RV for the subject property to show the true picture, and so as to give both the landlord and tenant a fighting chance of making a living in this difficult financial climate.

13. Mr Davidson said that as there had been no valuation provided by the appellant, he was unsure how Mr Mills had come to his proposed £5,000 RV or the proposed £/m^2 ITZA he was seeking. Mr Davidson understood that the main evidence being put forward by the appellant was the actual rent of the property. He highlighted to the panel a number of issues regarding this rent and submitted that the passing rent was an unreliable indicator of value, having regard to the overall pattern of rental values in the locality as demonstrated by nearby properties. Mr Davidson said the analysed rents for Winner Street ranged from £66.11/m^2 to £153.38/m^2. He said the shop at 91/93 Winner Street was the closest comparable to the subject property showing an analysed rent of £102.88/m^2 ITZA. Having looked at this 'basket of rents' and consideration of the properties in the locality, it was Mr Davidson's opinion that the rental evidence supported a reduction from £130/m^2 to £105/m^2. Mr Davidson provided the panel with a rental summary which showed the evidence he was using in order to demonstrate that a reduction in the £/m^2 had been warranted.

14. The panel accepted that the rent passing on the appeal property was the appropriate starting point, in accordance with the propositions for weighing evidence established in the Lands Tribunal decision in *Lotus and Delta v Culverwell (VO)* [1976] RA 141. The RV represents the rent that the premises would have likely achieved on the open market at the AVD of 1 April 2015. *Lotus and Delta* also established that assessments of comparable properties were relevant and that an opinion of the value of the appeal property should be reached in the light of all of the evidence, weighed appropriately.

15. The panel was informed by Mr Davidson that it was his understanding that the rent of £5,496 represented a licence to occupy the premises and that there was no reasonable expectation of continuance. A copy of the lease has been requested but had not been provided. He had therefore been unable to clarify whether the rent is a 'shell' rent or whether there is a schedule of condition or any other covenants attached to the lease to indicate whether this is a full representative rent. Mr Davidson said the property has also been let on a License to Occupy and a Tenancy at Will which indicates that the rent will reflect that the tenant does not have the same security of tenure as a lease may provide. The rent therefore is not considered to be a full representative rent and cannot be used in isolation to establish the tone of value in this location. He had therefore placed little weight on the passing rent.

16. The panel agreed with the parties that although the rent passing on the appeal property had to be considered as the appropriate starting point, the circumstances in which it was agreed had to be taken into account in order to determine whether it was a reliable guide to RV. In this case the VO had been unable to ascertain the specific details of the lease in order to clarify whether there are any covenants or restrictions attached which would indicate whether this is a full rent

as explained above. For example, if this was a shell rent, with fitting out undertaken at the tenants' own expense, it is reasonable to assume that the rent would have been higher had the unit been fitted out prior to the start of the tenancy.

17. The panel noted that within the appeal documents the appellant had advised the VO that the tenant was given a 9-month rent free period prior to 24 September 2015, in order to refurbish and fit out. The landlord had contributed £2,000 towards this fit out but the total amount of expenditure is unclear. It is reasonable, in the panel's view, to consider that the rent would have been higher had the property been in a reasonable state of repair and not in need of refurbishment when the rent was agreed. Given the above the panel found that the rental evidence on the subject property was unreliable and attached little weight to it.

18. In reaching its decision, the panel had regard to the other rental evidence available, and it found that this consistently supported the VO's case. Rental evidence from six other retail shops within a 70-metre radius of the subject had revealed a range in value for Winner Street from £66.11/m^2 to £153.38/m^2 ITZA. The subject property's rent having been analysed to £66.11/m^2 ITZA. The lowest and highest values are considered by the VO as outlying rents with three of the six rents analysing to £98.97/m^2, £102.88/m^2 and £102.59/m^2 ITZA. The VO had thus revised the rate adopted here from £130/m^2 to £105/m^2, which he believed was reasonable. Having carefully looked at this 'basket of rents' and considered the comparable properties in this location, the panel accepted the VO's contention that the rental evidence in Winner Street clearly supported a reduction from £130/m^2 to £105/m^2.

19. In conclusion, having considered all of the evidence, the panel found that it was inappropriate to rely only on the rent of the appeal property for the reasons already given. Having regard to the physical state of the appeal property and its locality at the material date of 1 April 2017, and the evidence referred to, the panel is of the opinion that the revised price per m^2 adopted of £105/m^2 ITZA is fair and reasonable. In this appeal the panel has given greater weight to the 'basket of rental evidence' and confirmed the RV currently in the compiled rating list for 97-99 Winner Street, Paignton, as not being unreasonable.

20. In view of the foregoing, the appeal was unsuccessful and dismissed accordingly.

Date: 27 November 2020

Appeal number: CHG100071039