THE VALUATION TRIBUNAL FOR ENGLAND

Summary of Decision: non-domestic rating appeal; Accuracy of Compiled list RV in 2017 Rating List; Shop & Premises; price per m² to be adopted; Lotus and Delta v Culverwell (VO) [1976] RA 141; rental evidence; allowance for lack of storage; Appeal Partly Allowed

Re: 60 Fore Street, Topsham, Exeter EX3 0HL

APPEAL NO: CHG100072088

BETWEEN:	Nest	Appellant
	and	
	Valuation Officer	Respondent

PANEL: Mr M Aspinall (Senior Member)
Mrs C Parkes

CLERK: Mr G Wayman

REMOTE HEARING: 10 November 2020

APPEARANCES:

Mr S Shaw of Business Rates Specialists Ltd representing the appellant
The Respondent Valuation Officer was represented by Mrs C Downs

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Summary of Decision

1. The appeal is partly allowed and the panel confirms a revised RV of £13,000 with effect from 1 April 2017.

Introduction

2. This was a 2017 Rating List appeal. The Rateable Value (RV) of the appeal hereditament was originally £16,750 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 £14,250, as the VOA reduced the base value, and altered the rating list with effect from 1 April 2017. The appeal was made on 3 April 2020 against the Valuation Officer's (VO) Decision Notice of 4 December 2019 in respect of the appeal property (hereditament) and the RV of £14,250. The VO's decision

was to treat the appellant's proposal as not well founded and the entry of £14,250 RV was deemed as correct.

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. Mr Shaw appeared on behalf of the appellant as both 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 Shaw's declaration of truth included a statement that he was instructed under a conditional fee arrangement.

6. Mr Shaw in his declaration 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 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).

8. The panel therefore considered the "expert" evidence and attached such weight to it as it saw fit.

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. Mr Shaw, for the appellant, sought a reduction to £12,250 RV based on £295 per m² ITZA plus a 5% reduction for lack of storage. Mrs Downs, for the VO, defended the existing RV of £14,250, which was based on £325 per m² ITZA and sought dismissal of the appeal.

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

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).

13. 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.

14. The panel was informed that the appeal property comprised a ground floor A1 retail shop within a three storey attached Georgian building laid out to provide residential accommodation over the first and second floors.

15. The property is situated at the lower end of Fore Street in Topsham, opposite the junction with Victoria Road. This part of Fore Street has a lower footfall when compared to the central part of Fore Street, with occupiers including Co-op and The Salutation Inn.

16. The appeal property was held on a new lease by way of a 5 year term from 1 August 2015 at OMV and subject to 3 yearly reviews. The rent was £12,000 per annum and it analysed to £262.47 per m² ITZA.

17. Mrs Downs contended that in her opinion the rent on the appeal property was unreliable as it was effective some 4 months after the AVD. She contended that the passing rent on the adjoining property 59 Fore Street was more reliable as it was pre AVD. The lease on this property is a new 10 year FRI lease at OMV agreed at 1 November 2014 and analyses to £327.39 per m² ITZA and in her opinion fully supports the £325 per m² ITZA placed on the appeal property.

18. Mrs Downs also presented comparable rental evidence at 25, 28 and 80 Fore Street, it was accepted that these properties were located in better trading positions. However, the rental analysis on these properties support £380 per m² ITZA applied to these properties which is considerably higher than the £325 per m² ITZA applied to the appeal property. It was her opinion this evidence further supported her assessment.

19. Mr Shaw was of the opinion that the rental evidence in respect of the subject property provided the best evidence in respect of the assessment as it is an open market new lease in an arm's length transaction.

20. Mr Shaw accepted that the rental evidence on the adjoining property 59 Fore Street was also good rental evidence and should be taken into account. Therefore taking into account the key rents on the appeal property and 59 Fore Street and their analysis an average rate of £295 per m² ITZA seemed fair and reasonable to be applied to the appeal property.

21. Mr Shaw contended that little weight should be placed upon Mrs Downs' comparable rental evidence as these properties were located either on the opposite side of the road or in better trading positions, which attracted higher rental values.

22. Mr Shaw presented his own comparable evidence on 56, 37 and 37b-38 Fore Street. It was agreed to disregard 56 Fore Street as the rent on this property was 3 years from the AVD. 37 Fore Street had a 2016 rent which analysed to £212.04 per m² and 37b – 38 Fore Street had a 2013 rent which analysed to £239.92 per m².

23. The VO stated that little weight should be placed on this evidence as 37 Fore Street was located close to the appeal property but the rent on this property is a post AVD 2016 rent review and not on an FRI basis and therefore is not reliable evidence. No evidence has been produced for the 2015 rent 37b-38 Fore Street; their records show that the rent submitted relates to a lease effective in 2013.

24. 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.

25. The panel considered what both parties have had to say regarding the subject property's rent, which was agreed at £12,000 pa with effect from 1 August 2015. The panel noted the reasons given by the VO why little weight should be placed upon it. However, it disagreed with the VO as the panel consider that this rent was an open market rent that took place only 4 months after the AVD. The panel consider that no substantive evidence or argument had been placed before it to persuade it that for rating purposes this rent should be ignored.

26. Even though the panel placed weight upon the passing rent on the appeal property as it took place close the AVD, the panel was of the opinion that the rent on the adjoining property which also took place close to the AVD (November 2014) should also be considered.

27. The panel found that the appeal property and 59 Fore Street were similar in size and located in the same part of Fore Street. The panel noted that even though the rents on these properties both started close to the AVD there was a wide variation in the value on these properties. The rents analysed to £262.47 per m² and £327.39 per m².

28. It was the panel's opinion that weight should be placed upon both these rents, as they took place close to the AVD. The panel was satisfied that the rate of £295 per m² proposed by Mr Shaw was supported by this rental evidence and was a fair and reasonable value to place upon the appeal property.

29. The panel considered the other comparable rental evidence presented by both parties however, it placed little weight on it. This was because in line with *Lotus and Delta* the panel considered that as the rent on the appeal property was a new letting on the open market that took place close to the AVD, it was a good starting point. This rent in conjunction with the rent on the adjoining property, number 59, which also took place close to the AVD, supported the appellant's argument that a value of £295 per m² was a fair and reasonable value to apply to the appeal property.

30. Mr Shaw also argued that a 5% allowance should be applied to the appeal property to reflect lack of storage. The panel consider that there was a lack of any direct substantive evidence to support this allowance. It also considered that any disadvantage for a dearth of storage would be reflected in the rental bid made by the appellant in 2015. Therefore, an allowance for lack of storage was not warranted.

31. Having considered all the evidence presented and taken it all into account, the panel placed most weight on the rents on the appeal property and 59 Fore Street which were effective from close to the AVD. The panel therefore found that a value of £295 per m^2 ITZA proposed by Mr Shaw is fair and reasonable for the appeal property.

32. The panel partly allows the appeal and confirms a rounded RV of £13,000 with effect from 1 April 2017.

Order:

33. In accordance with Regulation 38 (4) and (9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Officer is ordered to alter the appeal property's entry in the Rating List to £13,000 Rateable Value with effect from 1 April 2017. The Valuation Officer must comply with this Order within two weeks of its making.

34. Any fee paid will be refunded in full in accordance with regulation 13E.

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Dated: 18 November 2020