VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; challenge against compiled List entry; shop and Premises; accuracy of rateable value; zoning; analysis of rent on comparable property; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal allowed.

RE: 38 New George Street, Plymouth PL1 1RW

APPEAL NUMBER: CHG100075464

BETWEEN:	Clubsport Skechers Ltd	Appellant
	And	
	Andrew Corkish MRICS (Valuation Officer)	Respondent

PANEL: Mrs J Ellis (Senior Member)
Mrs A Taylor

CLERK: Miss F Willson

REMOTE HEARING ON: 10 November 2020

APPEARANCES: Mr S Cronk of Altus Group (on behalf of the Appellant)
Miss J Reading (on behalf of the Valuation Officer).

Summary of decision

1. Appeal allowed. The current entry in the Rating List is to be reduced to £47,250 with effect from 1 April 2017.

Introduction

2. The appeal arises from a challenge made by the appellant's representative on 20 February 2020, in respect of 38 New George Street, Plymouth PL1 1RW (the appeal property). The challenge was in respect of the entry in the rating list at £73,500 rateable value (RV) effective from 1 April 2017. The appellant sought a revised assessment of £47,250 RV with effect from 1 April 2017. After considering the merits of the challenge, the Valuation Officer determined that the RV should be reduced to £67,000 and a decision notice to this effect was issued on 10 March 2020. The appellant made an appeal to this tribunal which was received on 20 May 2020.

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 Cronk 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 Cronk'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.

6. The subject property comprises of a shop and premises with an agreed area of 373.54m^2. The property is a mid-terraced retail unit located on New George Street in Plymouth between the entrance to the Drakes Circus Shopping Centre and Armada Way. The property was let on a ten year lease commencing on 4 January 2016. A rent free period of eight months and one week was followed by a stepped rent with a rent review on 3 January 2021.

7. 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 their decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

Issue

8. The issue between the parties concerned the RV of the appeal property and, specifically, the rate in terms of zone A (ITZA) that should apply.

Decision and reasons

9. 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. 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.

10. Where rental evidence is available, the weight to be attached should be considered in light of the six propositions set down in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141.

    i. Where the hereditament which is the subject of consideration is actually let, that rent should be taken as the starting basis.

    ii. The more closely the circumstances under which the rent agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of gross value in
    section 19(6) of the General Rate Act 1967 the more weight should be attached to it. (These statutory requirements now contained in Schedule 6, Para 2 (1) Local Government Finance Act 1988 (as amended by the Rating (Valuation) Act 1999)).

    iii. Where rents of similar properties are available, they too are to be properly looked at through the eye of the valuer in order to confirm or otherwise the level of value indicated by the actual rent of the subject property.

    iv. Assessments of other comparable properties are relevant. When a valuation list is prepared these assessments are to be taken as indicating comparative values estimated by the valuation officer. In subsequent proceedings on that list therefore they can be properly be referred to as giving an indication of that opinion.

    v. In light of all the evidence an opinion can then be formed of the value of the appeal hereditament, the weight to be attached to the differing types of evidence depending on the one hand the nature of the actual rent and on the other hand, on the degree of comparability found in other properties.

    vi. In those cases where there are no rents available of comparable properties a review of other assessments may be helpful but, in each circumstance, it would be difficult to reject the evidence of the actual rent.

11. Mr Cronk referred the panel to the passing rent on the appeal property, adjusted to take into account the rent free period and stepped rent. The rent had been agreed in January 2016:

i. £0 for the period from 4 January 2016 to 10 September 2016,
ii. £25,000 for the period from 11 September 2016 to 10 September 2017
iii. £50,000 for the period from 11 September 2017 to 2 January 2021.

12. Mr Cronk had carried out an adjustment for the stepped rent over five years. Based on the area of 373.54m^2, this resulted in an ITZA rate of £493.59 rounded to £500 per m^2. After considering all the evidence and taking a stand back and look approach he revised this to an ITZA rate of £700 per m^2.

13. He submitted that in accordance with the six propositions set out in the case of *Lotus v Delta*, the passing rent on the appeal premises should always be the primary evidence. The rental on the appeal property is close to the AVD being eight months after. In his opinion, this shows that the assessment is overvalued with the ITZA rate of £1000 per m^2.

14. Mr Cronk referred the panel to a number of comparable properties which were shops in the same locality as the appeal property:

i. Unit 46, 1 Charles Street, RV £78,000, area 103.24m^2, new letting from 3 July 2017, rent £44,000, analysed rent of £676.92 per m^2. This is a unit inside the Drakes Circus Shopping Centre.

ii. Pt 21, Old Town Street, RV £37,750, area 103.31m^2, new letting from 1 August 2015 (four months after the AVD), analysed rent £652.11 per m^2. This was reduced as a result of a challenge from £900 per m^2 to £700 per m^2.

iii. 44 New George Street, RV £143,000, area 438.40m^2 (very close in size to the appeal property)

    i. 11 April 2013 new letting, rent £74,735 with six months half rent, analysed rent £518 per m^2.
    ii. 11 April 2015, rent review, rent £93,000, analysed rent £648 per m^2.

Mr Cronk submitted that these comparable properties supported the ITZA rate of £700 per m^2 that he was proposing. Pt 21, Old Town Street had an ITZA rate of £900 per m^2 compared to the appeal property £1000 per m^2. This was reduced on challenge to the rate of £700 per m^2 the same rate he proposes is adopted for the appeal property.

15. The panel put weight on the comparable properties as they were in the locality of the appeal property and were a similar size. They supported the appellant's claim for an of ITZA rate of £700 per m^2. In particular 44 New George Street had an ITZA rate of £648 per m^2 ten days after the AVD and so the panel put great weight on this as a comparable property.

16. Mr Cronk explained to the panel that there were more shops than tenants in Plymouth city centre and so the market is tenant driven. The Drake Circus Shopping Centre had moved the footfall in Plymouth from New George Street which was the original shopping centre to

Drakes. Since the shopping centre opened the shops on New George Street had had a notable fall in popularity and hence rents.

17. He argued that the pitches close to Drakes had a significant advantage but as you moved to the west the pitches were less popular. The unadjusted rates for the shops on New George Street at the eastern end were £1,100 per m^2 but fell to £500 per m^2.

18. Mr Cronk submitted that there should be a break in the tone for shops in New George Street. In his opinion the shops towards the western end should have an ITZA rate of £700 per m^2 rather than the present position where there was a sudden drop of £500 per m^2 between one shop and the next. He believed the values should drop on a sliding scale along the street.

19. The panel found that a drop from an ITZA rate of £1,000 per m^2 to £500 per m^2 was a large drop and that an intermediate value of £700 per m^2 was more reasonable. The properties in New George Street had suffered as result of the Drakes Circus Shopping Centre opening and the affect would increase the further away the shop was from the entrance to the Centre.

20. Mr Cronk submitted that the RV on the appeal property should be £47,250 from 1 April 2017 as set out below based on an ITZA rate of £700 per m^2:

Floor	Description	Area (m^2)	£/m^2	Value
Ground	Retail zone A	30.04	700.00	£21,028
Ground	Retail zone B	28.15	350.00	£9,853
Ground	Retail zone C	28.5	175.00	£4,988
Ground	Remaining retail zone	4.14	87.50	£362
Lower Ground	Internal storage	265.92	35.00	£9,307
Lower Ground	Office	6.01	66.50	£400
Lower Ground	Mess/Staff Room	10.78	66.50	£717
Lower Ground	Staff Toilets		0.00	£0
Lower Ground	Staff Toilets		0.00	£0
	Subtotal	373.54	Sub total	£46,654
	Air conditioning	90.8	7.00	£636
			Total Value	£47,290
			RV	£47,250

21. Miss Reading explained that the lease on the appeal property needed to be adjusted to comply with the statutory definition and this meant that in her view it held little weight. Furthermore the rent was set ten months after the AVD which in her opinion was too long after the AVD to place much weight on that evidence.

22. The panel was aware that when rental evidence requires adjustment in order to comply with the statutory definition, it becomes less reliable. In the hierarchy of evidence laid out in *Lotus v Delta* the passing rent on the appeal property is only the starting point. After looking at the rent of the appeal property, then the rent of comparable properties must be added to the basket of evidence.

23. Miss Reading provided the panel with a list of comparable properties which were all shops in the immediate location of the appeal property:

    i. 5-7 New George Street, RV £64,500, area 167.4m^2, rent £83,995, open market lease from 6 November 2014, analysed rent £1,001.14. This is four months prior to AVD supports the ITZA rate of £1000 per m^2 on the appeal property.

    ii. 2 New George Street, RV £45,250, area 52.25m^2, rent £45,000, open market lease from 2 March 2015, analysed rent £1,195.22 although £1,000 per m^2 was adopted. This is higher than the ITZA rate on the appeal property and is one month prior to the AVD.

    iii. 42 New George Street, RV £150,000, area 575.7m^2, new lease dated 1 June 2016, analysed rent £930.61 per m^2. This property is just two units away from the appeal property although considerably larger. There was one rent free year but the valuation officer was unaware of this and this would change the analysed rate to £720.34 per m^2.

    iv. 40 New George Street, RV £131,000, area 749.3m^2 lease renewal from 14 May 2013, analysed rent £1,164.87 per m^2. An ITZA rate of £1,100 was adopted. This is the next door unit to the appeal property.

    v. 28 New George Street, RV £76,500, area 226.5m^2, rent review from 24 November 2013, analysed rent £1,665.94 per m^2. An ITZA rate of £1,100 was adopted.

    Miss Reading submitted that these comparable properties supported that a tone had been established: for shops in the locality of an ITZA rate of £1,000 per m^2 and for larger properties £1,100 per m^2. The appeal property has an ITZA rate of £1,000 per m^2 in line with the comparable properties supplied.

24. Having looked at the comparable properties provided by the respondent the panel did not put weight on 40 New George Street as the analysed rent was so different to all the others and neither party could explain the reason for this. Number 28 New George Street was after a rent review which is not as strong evidentially as a new lease. The rent review was two years before the AVD and so the panel gave that evidence little weight.

25. The rent on the properties on New George Street fell on a sliding scale the further west along the street. The panel put most weight on 44 New George Street that had an ITZA

rate of £648 per m^2 at the AVD and 42 New George Street which had an ITZA rate of £720.34 per m^2. These support the ITZA rate of £700 per m^2.

26. Having considered both parties' rental evidence and analysis for the comparable properties, the panel concluded that the ITZA rate of £700.00 per m^2 was reasonable. The panel held that the existing assessment was unreasonable and the RV should be reduced to £47,250 from 1 April 2017.

27. In cases of this nature, it is for the appellant to demonstrate that the RV is unreasonable, and the panel found that in this case the appellant had done so.

28. The appeal is therefore allowed.

Order

29. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry 38 New George Street, Plymouth PL1 1RW to £47,250 with effect from 1 April 2017, within 2 weeks of the date of this Order.

30. The ratepayer is also entitled to a refund in full of the fee paid in accordance with regulation 13E (1)(a) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009.
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Date: 4 December 2020

Appeal number: CHG100075464