THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; shop and premises; allowance for size and split floor levels in dispute; rental evidence; comparable assessments; appeal dismissed.

RE: 5-7 Richmond Hill, Bournemouth, BH2 6HE

APPEAL NUMBER:	CHG100080823	
BETWEEN:	23.5 Degrees Limited t/a Starbucks	Appellant
	and	
	Mr D Virk, Valuation Officer	Respondent
PANEL:	Mr A Ramsay (Senior Member sitting alone)	
CLERK:	Mrs L Horne	
REMOTE HEARING ON:	Tuesday 8 December 2020	
APPEARANCES:	Mr P Inglis, from The Beattie Partnership, representing the appellant	
	Mrs S Shand representing the Valuation Officer	

Summary of decision

1 Appeal dismissed. The Rateable Value (RV) of the appeal property is confirmed at £45,500 with effect from 1 April 2017.

Introduction

2 This is a 2017 rating list appeal. 5-7 Richmond Hill, Bournemouth, BH2 6HE, (the 'appeal property') had been entered in the 2017 rating list as 'shop and premises' at a RV of £46,000 with effect from 1 April 2017.

3 The challenge proposal was submitted by The Beattie Partnership on behalf of 23.5 Degrees Limited t/a Starbucks and was received by the Valuation Officer on 13 March 2019. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was wrong. A revised RV of £38,000 was proposed with effect from 1 April 2017.

4 The Valuation Officer issued a challenge case decision notice on 27 May 2020, which stated that based upon the evidence and information available, the rating list entry of £46,000 RV was considered to be not reasonable and there would be an amendment to £45,500 RV with effect from 1 April 2017.

5 In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal has been made on the grounds that the valuation for the hereditament is not reasonable. The appeal was received by the Tribunal on 25 September 2020.

6 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.

7 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.

8 Mr Inglis 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), his declaration of truth included a statement that he was not instructed under any 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.

9 The appeal property was formerly two separate retail units, but has been reconstructed to provide one larger unit with A3 planning use. It is situated on Richmond Hill, close to Bourne Avenue, a busy shopping area in the centre of Bournemouth. It has a total area of 123.38 m^2 in terms of Zone A (ITZA) and has been valued at a Zone A price of £360 per m^2.

10 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 it being overlooked.

Issue

11 The issue in dispute was whether a 15 % allowance should be made to the valuation, in consideration of the rental analysis and the physical characteristics of the appeal property.

Evidence and submissions

12 The bundle comprised all of the documents exchanged between the parties as part of the challenge process: Valuation Officer's challenge case decision notice, rental evidence summary; appellant's challenge submission. Photographs and location plans of the appeal property had also been provided by Mrs Shand.

13 On behalf of the appellant, Mr Inglis explained that the challenge proposal had been submitted by his colleague, Mr Sayers, who had sought a revised RV of £38,000. This had been based upon a valuation which adopted the Valuation Officer's areas but with a 15% allowance to reflect the different floor levels within the property, and an alternative valuation which adopted the Valuation Officer's adopted Zone A price of £360 m^2, but was based upon Mr Sayers' areas.

14 Mr Inglis confirmed that he was not seeking to challenge either the present tone of £360 per m^2, or the Valuation Officer's areas. Instead, he contended that the analysis of the subject rent was key to the RV, and reflected the size and split floor levels. Based upon his analysis, he asked for the RV to be determined at £39,500 with effect from 1 April 2017.

15 On behalf of the Valuation Officer, Mrs Shand confirmed that following the challenge proposal, a 5% allowance had been applied to reflect the presence of steps in Zone B. She submitted that there was no evidence to support a further allowance for size.

16 Mrs Shand accepted that the subject rent was the starting point, however, she had attached less weight to it as it was a stepped rent which required adjustment. With reference to the rental evidence in the locality, she was satisfied that the RV of £45,500 was correct, and therefore she requested that the appeal be dismissed.

Decision and reasons

17 In arriving at my decision, I am governed by rating legislation laid down by Parliament where Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999, provides that:

> 2(1) 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;
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> (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.

18 In respect of an appeal against an entry in the 2017 rating list, the rental levels are to be taken as those passing at the antecedent valuation date (AVD) of 1 April, 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841).

19 The material day (the date by which physical factors have to be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject appeal, the material day is 1 April 2017.

20 In the subject appeal, Mr Inglis contended that the key evidence to arrive at the RV was the subject rent. Mrs Shand submitted that less weight should be attached to a stepped rent and therefore she relied upon the comparable rental evidence in support of the present valuation.

21 In the challenge decision notice, the Valuation Officer had referred to the leading judgment of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141, which set out six propositions to be followed when considering the weighting of evidence:

1. Where the hereditament which is the subject of consideration is actually let that rent should be taken as the starting point.
2. 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 s.19(6) of the General Rate Act 1967 the more weight should be attached to it.
3. 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.
4. 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 properly be referred to as giving an indication of that opinion.
5. In light of all the evidence an opinion can then be formed of 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.
6. In those cases where there are no rents available of comparable properties a review of other assessments may be helpful but in such

circumstances it would be clearly more difficult to reject the evidence of the actual rent.

22 In the subject appeal, a new 15 year full repair and insurance (FRI) lease had been agreed with effect from 12 May 2014, with five yearly rent reviews and a ten year break clause. The lease was based on a stepped rent, with a rent free period for the first year. The rent was then increased to £46,000 per annum for four years with effect from 12 May 2015, and increased to £52,000 per annum from 12 May 2019 for five years. The rent for the last five years was to be determined at the rent review on 12 May 2024.

23 As outlined above, the starting point is the consideration of the actual rent, but the circumstances as to time, subject matter and conditions relating to the statutory requirements need to be taken into account when deciding the weight to attach to it. The subject rent was agreed eleven months before the AVD, and was a stepped rent which required further analysis.

24 I noted that the parties had arrived at a different analysis of the rent: the Valuation Officer had adjusted the rent over ten years until the break clause to arrive at £344.64 per m^2. Mr Inglis had adjusted the rent over five years (to the first review) to arrive at £37,922.84. He then added tenant's improvements (air conditioning and CCTV) to arrive at his adjusted rent of £39,722.84; his analysed rent was therefore lower at £322 per m^2.

25 In view of the differing adjustments required to the subject rent, I decided that while it carried some weight, it should not be considered in isolation. I therefore turned to the available rental and comparable assessment evidence in the locality:

28 Richmond Hill, Bournemouth BH2 6EJ

A smaller unit of 34.11 m^2 ITZA, a new FRI lease was agreed at open market value on 18 January 2013 at £12,500 per annum. The rent analysed at £366.46 per m^2. Mrs Shand submitted that this was good evidence to support the tone of £360 per m^2 Zone A.

24 Richmond Hill, Bournemouth BH2 6EJ

A smaller unit of 40.67 m^2 ITZA, subject to a stepped rent effective from 19 April 2014, which analysed at £359.16 per m^2. Mrs Shand stated that while it was a stepped rent, the property was also used as a coffee shop; the tenants had not made any improvements as part of the lease, and had only been given one month rent free to decorate. She placed more weight on this rental evidence as it was cleaner than that of the subject.

26 Richmond Hill, Bournemouth BH2 6EJ

A smaller unit of 30.40 m^2 ITZA, the rent effective from 1 September 2015 analysed at £515.63 per m^2. Mrs Shand commented that this was a lease renewal, and appeared to be an outlier, and so had not been given much weight as evidence to support the tone.

26 Mr Inglis highlighted the fact that the appeal property was three times the size of the Valuation Officer's three rental comparable properties. He considered that they supported his case for a 15% allowance for size and split floor levels.

27 I had to take into account the point made by Mrs Shand that for zoning purposes, the difference in size between properties was not a significant factor, but rather the value attributed to a certain location. The three rental comparable properties were located further away from the main shopping area, and therefore it did not appear that a tone of £360 per m^2 Zone A was unreasonable for the appeal property.

28 Mr Inglis had not provided any other rental or comparable assessment evidence which supported an allowance for size. He had relied solely upon his analysis of the subject rent, however, the guidance from *Lotus and Delta* required further consideration of all of the available evidence.

29 I am satisfied that Mr Inglis' contention for an allowance to reflect the split floor level had been addressed by the Valuation Officer in the challenge decision notice. The RV had been altered to £45,500 RV following an adjustment of 5% to Zone B, where the steps were located. I am not persuaded that any further allowance is warranted, and therefore the appeal is dismissed.

Date: 22 December 2020

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