THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; shop and premises; Zone A price per m^2 in dispute; rental evidence; comparable assessments; appeal dismissed.

RE: Unit 2 at 69-89 Holdenhurst Road, Bournemouth, BH8 8FT

APPEAL NUMBER:	CHG100089325	
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	
	Mr S Scarry representing the Valuation Officer	

Summary of decision

1 Appeal dismissed. The Rateable Value (RV) of the appeal property is confirmed at £26,250 with effect from 1 April 2017.

Introduction

2 This is a 2017 rating list appeal. Unit 2 at 69-89 Holdenhurst Road, Bournemouth, BH8 8FT, (the 'appeal property') had been entered in the 2017 rating list as 'shop and premises' at a RV of £32,250 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 10 April 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 £17,500 was proposed with effect from 1 April 2017.

4 The Valuation Officer issued a challenge case decision notice on 1 July 2020, which stated that based upon the evidence and information available, the rating list entry of £32,250 RV was considered to be not reasonable and there would be an amendment to £26,250 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 is a standard retail unit with A3 planning use, occupied by Starbucks. It is situated on the B3066 on the east side of St Paul's roundabout, within a commercial area between college and university buildings. The property has a total area of 177.43 m^2, or 86.83 m^2 in terms of Zone A (ITZA) and is presently valued at a Zone A price of £280 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 is the Zone A price per m^2 to be adopted in the valuation 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: initial response to the challenge; Valuation Officer's challenge case decision notice; and appellant's challenge submission.

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 £17,500. This had been based upon his adopted Zone A price of £190 per m^2, derived from analysis of the subject rent and reference to comparable properties in the locality valued at £175 per m^2 Zone A.

14 Mr Inglis confirmed that his proposed RV of £18,250 was based upon Mr Sayers valuation, but also reflected an adjustment for air conditioning and car parking.

15 On behalf of the Valuation Officer, Mr Scarry explained that he had also picked up this case from a colleague. Following the challenge proposal, the Zone A price had been reduced from £350 to £280 per m^2. He contended that £280 per m^2 was supported by the basket of rental evidence, and not unreasonable given that nearby units were valued at £350 per m^2.

Decision and reasons

16 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;
>
> (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.

17 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).

18 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.

19 The appeal property was subject to an under-lease, which had commenced on 31 July 2015 on a 15 year full repairing and insuring (FRI) lease, at a rent of £20,000 per annum, based on open market value. The lease provided for nine months peppercorn rent with five yearly rent reviews and a break clause at five and ten years. The parties had opted out of Sections 24-28 of the Landlord & Tenant Act 1954.

20 The head-lease was a 20 year FRI lease with effect from 10 May 2013 at a shell rent of £20,000 per annum, at open market value. There were yearly rent reviews, and a six month rent free period for fitting out.

21 The Valuation Officer analysed the rent in respect of the under-lease at £197 per m^2 ITZA, ignoring a standard three month rent free period. This was not disputed by Mr Inglis, who contended that the key evidence to arrive at the RV was the subject rent. However, Mr Scarry submitted that the rents on the subject did not appear to be full representative rents as they had either opted out of Sections 24-28 of the Landlord and Tenant Act 1954, or the rent was a shell rent and therefore neither met the rating hypothesis of a full representative rent.

22 In response, Mr Inglis submitted that there should be no adjustment to reflect that the parties had opted out of the Landlord & Tenant Act provisions. In his opinion, the 15 year lease was agreed on an open market basis, Starbucks' position as tenant was strong, and the landlord would want the tenant to renew.

23 In essence, there was a question over whether the rent could be relied upon, given the terms of the lease. It was the Valuation Officer's case that it did not conform to the statutory definition of RV, whereas, the appellant's case was based solely upon the rent as it was considered to be the prime evidence in arriving at the RV.

24 I was not persuaded that the parties opting out of the Landlord & Tenant Act should be ignored. This was a significant factor, as it reflected a lack of security of tenure. I was also guided by the leading judgment of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141, referred to

in the challenge case decision notice, which had 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.

25 I decided that while the subject rent is the starting point, due to the adjustments required, and in consideration of the lack of security of tenure, less weight should be attached to it; in any case, it should be considered alongside the basket of evidence, and not in isolation. I therefore turned to the available rental and comparable assessment evidence in the locality.

26 In the challenge proposal, Mr Sayers had referred to five properties on Holdenhurst Road which had been valued at £175 per m^2 Zone A (numbers 144, 150, 152, 154 and 156). Mr Inglis did not seek to rely on those properties at the hearing, presumably because they were located some distance from the appeal property.

27 The Valuation Officer provided the following rental evidence:

52 Holdenhurst Road, Bournemouth BH8 8AH

A smaller unit of 27.98 m^2 ITZA, the rent of £15,960 per annum, effective from 1 October 2015 analysed at £536.17 per m^2. It had been valued at an adopted tone of £360 per m^2 Zone A. Mr Inglis commented that this was far in excess of the other rents, and therefore appeared suspect, whereas Mr Scarry argued in the alternative that it suggested that the subject rent was low.

62 Holdenhurst Road, Bournemouth BH8 8AQ

A smaller unit of 44.39 m^2 ITZA, subject to a rent of £14,400 per annum effective from 1 September 2017. The rent analysed at £296.89 per m^2 and it had been valued at an adopted tone of £360 per m^2 Zone A. Less weight had been attached to this rent by the Valuation Officer, as it was an open ended agreement to an existing tenant. Mr Inglis questioned its reliability, as it was subject to a top up based on turnover.

44 Holdenhurst Road, Bournemouth BH8 8AD

A smaller unit of 66.69 m^2 ITZA, the rent of £26,000 per annum, effective from 1 July 2014 analysed at £362.39 per m^2. Mr Inglis commented that this was a restaurant with substantial accommodation on the mezzanine, first floor and basement, which distorted the Zone A price per m^2. Mr Scarry acknowledged that this property and the other two rental comparables were situated in a better location in a row of shops on the opposite side of the road, however, he contended that they supported the tone of £360 per m^2 Zone A.

28 It was recognised that there was limited rental evidence available in the immediate locality of the subject, and therefore the Valuation Officer also referred to comparable assessment evidence in support of the £280 per m^2 adopted in the valuation of the appeal property:

95-97 Holdenhurst Road, Bournemouth BH8 8DS

A unit of 74.01 m^2 ITZA, this was located close to the appeal property, and valued at a Zone A price of £280 per m^2. Mr Scarry confirmed that the Zone A price had been reduced from £350 to £280 per m^2 with effect from 1 April 2010, following an appeal. As the 2010 tone had not increased on this property, and the 2017 RV had not been challenged, Mr Scarry contended that this supported the tone adopted for the appeal property at £280 per m^2.

In response, Mr Inglis questioned the relevance of the 2010 list value, and argued that the lack of a challenge did not indicate an acceptance of the tone.

29 In consideration of all of the evidence presented, I found that the most compelling was that in respect of 95-97 Holdenhurst Road. With reference to the location plan, I noted that this was the closest to the appeal property, and on the same side of the road. It had been valued at a Zone A price of £280 per m^2, and therefore demonstrated that the tone was not unreasonable for the appeal property.

30 I found further support for the appeal property at £280 per m^2 Zone A with reference to numbers 44, 52 and 62 Holdenhurst Road. Those properties were on the opposite side of the road, but only a short distance away. They had been valued at a higher Zone A price of £360 per m^2, which led me to conclude that at £280 per m^2, the valuation of the appeal property was not unreasonable.

31 In his adoption of a Zone A price of £190 per m^2, Mr Inglis had relied solely upon his analysis of the subject rent. There were no other properties presented in the locality which had been valued at that level. Ultimately, the guidance from *Lotus and Delta* required consideration of all of the available evidence, not just the subject rent. For that reason, the appeal failed and was dismissed.

Date: 23 December 2020

Appeal Number: CHG100089325