VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; accuracy of the rateable value in the list as at 1 April 2017; showroom, store and premises; rental evidence; comparable assessments; appeal dismissed.

RE: Unit 8 Queens Court, Lenton Lane, Nottingham, NG7 2NR

APPEAL NUMBER: CHG100091684

BETWEEN:	J and S Accessories Ltd	Appellant
	and	
	Mrs J Moore (Valuation Officer)	Respondent

PANEL:	Mr MF Hunt (Senior Member) Ms S Eze
CLERK:	Mrs H Beresford
REMOTE HEARING ON:	16 April 2021
APPEARANCES:	Mr A Simons of Altus Group (Appellant's representative) Mr J Chan (for the Valuation Officer)

Summary of decision

1. The appeal was dismissed, the assessment was confirmed at rateable value (RV) £63,500 with effect from 1 April 2017.

Introduction

2. This appeal has been brought in respect of the following: Unit 8 Queens Court, Lenton Lane, Nottingham, NG7 2NR (the 'appeal property'), which was entered in the 2017 rating list as 'showroom, store and premises' at rateable value (RV) £63,500, effective from 1 April 2017.

3. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, J and S Accessories Limited made an appeal to the Valuation Tribunal for England (VTE). The appeal was made because the Valuation Officer decided not to alter the 2017 rating list following the appellant's check and challenge. The appellant had sought a reduction to RV £37,750 with effect from 1 April 2017.

4. The appeal to the VTE was made on the grounds that the valuation for the appeal property was not reasonable, as the Valuation Officer had not made any alteration to the rating list in his challenge decision notice.

5. The appeal property is the end unit of a terraced building compromising of several units of commercial accommodation. It is described as a retail warehouse consisting of a showroom and premises with an overall significant area of 438.37m^2. It is located on the edge of the Lenton Lane industrial estate at the edge of Riverside Retail Park and adjacent to Clifton Boulevard, an arterial route into Nottingham city centre. The appellant is a chain retailer selling new and used motorcycles and scooters, plus accessories and clothing.

6. The appellant's representative, when appearing as expert witness, stated that he was on a conditional fee arrangement. However, he also stated that he understood and accepted that his first duty was to the VTE in giving his evidence, whether or not the evidence supported his client's case.

7. The panel has accepted this expert witness evidence on the above basis as the appeal is not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and is 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. It was therefore appropriate for the panel hearing the evidence to consider the 'expert' evidence and assess what weight, if any, to give it in the context of the matters in issue before it.

9. 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.

10. 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.

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

Issue

12. The base level of value adopted for the appeal property was not agreed. The Valuation Officer has adopted £145.00/m^2 in respect of the appeal property, but the appellant sought a reduction to £85.00/m^2.

Evidence and submissions

13. 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 summaries; appellant's challenge submission; photographs and location plans of the appeal property; and comparable assessments.

14. Mr Simons contended that the rating assessment of £145.00/m^2 on the subject property is not in line with the other assessments in Queens Court considering the differences in the physical attributes between the properties. Both Unit 6 Queens Court and Unit 7 Queens Court had been reduced in 2020 to a main space price of £85.00/m^2 and £95.00/m^2 respectively with effect from 1 April 2017. This had resulted in an RV of £62,500 for Unit 6 and £75,000 for Unit 7.

15. He also argued that the evidence provided by the Valuation Officer to show that the appeal property was the only property in Queens Court which had been built with planning permission for retail use was of little relevance. He stated that planning permission was not required for retail use and Unit 6 'Tile Giant' also had retail space. Mr Simons asked the panel to reduce the main space price for the appeal property to £85.00/m^2 in line with Unit 6 which he believed to be the most comparable to the subject property and to confirm an RV of £37,750.

16. Mr Chan argued that a higher main space price had been set for the appeal property because of its size; the property measured 438.37m^2 as compared to 741.14m^2 for Unit 6 and 791.10m^2 for Unit 7. Mr Chan contended that a larger property would command a lower price/m^2. Mr Chan stated that the rent on the appeal property which had been agreed in April 2013 at £70,000 per annum with a four-month rent free period supported a main space price of £145.00/m^2.

17. Mr Chan contended that the fact that the appeal property had been built with planning permission for retail use would have added to the value as the frontage was different to the comparable properties as it had large windows in which to display stock which made it a more attractive proposition. Mr Chan asked the panel to confirm an RV for the appeal property at £63,500.

Decision and reasons

18. The panel had to determine the rateable value for the appeal property, which represented a rent that a hypothetical landlord and tenant would agree, as at the antecedent valuation date (AVD),1 April 2015. The common date was used to ensure that every property was treated in a consistent way.

19. The term 'rateable value' is defined in Schedule 6 to the Local Government Finance Act 1988 (as amended):

"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"

20. The Lands Tribunal judgment in *Lotus and Delta* v *Culverwell (VO) and Leicester City Council* [1976] RA 141 provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property was considered to be the correct starting point but, where available, rents on similar properties were also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.

21. The panel noted that there was rental evidence for the subject property, and it was aware that the agreement of £70,000 per annum had been reached prior to AVD in April 2013; this rent had been reviewed in 2018 and no alteration had been made to it. The panel were satisfied that the rent passing on the appeal property supported a main space price of £145/m^2 and applied significant weight to this. The panel noted that given that this property was significantly smaller than the comparable properties cited by Mr Simons which measured 741.14m^2 for Unit 6 and 791.10m^2 for Unit 7 as compared to 438.37m^2 for the appeal property, and that there was also separate rental evidence for both of those properties.

22. Furthermore, the panel was unable to attach significant weight to the fact that the comparable properties had had the same or similar main space prices for the 2010 rating list as it was aware that the 2017 list was a separate entity and the panel had direct rental evidence for the appeal property from 2013.

23. Mr Chan had contended that the appeal property had been built with planning permission for retail use which would have added to the value. The frontage was different to the comparable properties and he believed it to be a more attractive proposition. Whilst it was generally agreed by the parties that a retail unit could attract a higher rate than an industrial unit, and, whilst it was likely that Unit 8 was the unit referred to in the planning permission due to its slightly different frontage, the panel could only attach limited weight to this evidence as the planning permission did not specify which unit had planning permission for retail usage.

24. The panel found the evidence of comparable properties presented by Mr Chan to be persuasive and gave it moderate weight. Mr Chan had provided a rental summary for eight

comparable properties which supported a value of £145.00/m^2 for the appeal property. In particular the panel noted that on one of the comparable properties closest to the appeal property, Unit 2 Castle Retail Park, a rent was agreed on 16 March 2015, very close to the AVD. This property was slightly larger than the subject at 560.50m^2, with an adjusted rent of £73,591 per annum that reflected £115.00/m^2 and amounted to an RV of £64,000. As this property is larger than the appeal property the panel found that it supported £145.00/m^2 for the subject property as it would have expected to see a lower main space price for a larger property. This property is larger than the appeal property, but the panel found that its value of £115/m2 broadly supported a value of £145/m2 for the subject property as it would have expected to see a higher main space price for a smaller property in a particularly prominent location.

25. The panel found that in cases of this nature the burden of proof is on the appellant to satisfy the Tribunal that the appeal should be allowed. In this case the panel was not persuaded by the evidence and arguments put forward by the appellant's representative that a reduction in the assessment to £85.00/m^2 was warranted. Therefore, the appeal was dismissed.

Date: 10 May 2021

Appeal numbers: CHG100091684