VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; shop and premises; accuracy of rateable value in compiled list; comparable evidence considered; impact of works in the locality on rent agreed; Decision: Appeal allowed in part.

RE: 74 Bull Street, Birmingham, B4 6AD

APPEAL NUMBER: CHG100093129

BETWEEN:	Titan Entertainment Group Limited (represented by Hartnell Taylor Cook LLP)	Appellant
and	Dal S Virk (Valuation Officer)	Respondent

PANEL: Mrs L Bryning (Senior Member)
Mr D Heelas

REMOTE HEARING: 9 March 2021

CLERK: Mrs A Sloan

ATTENDEES: Mr M Davenport (Advocate for the Appellant)
Mr R Marcuccilli (Expert Witness for the Appellant)
Mr C Cowper (Advocate and Expert Witness for the Respondent)

Summary of decision

1. Appeal allowed in part. The Rateable Value (RV) is reduced to £41,250 with effect from 1 April 2017.

Introduction

2. 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. 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.

3. 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. This hearing was conducted via video conference using Microsoft Teams and the panel was satisfied that both parties were fully able to participate in the hearing.

4. Mr Davenport had confirmed in his supporting statement that his company is representing the appellant on a fixed fee basis and not a success related fee.

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

Preliminary issue

6. As a preliminary matter, Mr Heelas declared in open tribunal that Mr Davenport was known to him. The acquaintance was from many years ago and they had not met for a number of years. Mr Cowper confirmed that he had no objection to Mr Heelas continuing to hear the appeal and was satisfied that there was no conflict of interest.

Background

7. The appeal before the panel was a 2017 Rating List appeal. The Rateable Value (RV) of the appeal hereditament was £46,250 from 1 April 2017 but had been increased from 3 January 2019 to £48,500 following a change to the recorded floor areas highlighted at check stage. The challenge proposal was submitted on 30 April 2019 stating, '*IP disputes accuracy of RV shown in the rating list on 1 April 2017'.* This was a compiled list appeal, so the material day was also 1 April 2017.

8. The appeal was made on 3 December 2020 against the Valuation Officer's (VO) Decision Notice of 4 August 2020. The VO's decision was to treat the Appellant's proposal as not well founded and the entry of £48,500 RV from 3 January 2019, based on £550/m^2, was deemed correct.

9. The proposed RV sought by the Appellant was £38,750, based on the passing rent at the subject property and a base rate of £430/m^2.

Issue

10. The physical survey details of the subject property were agreed between the parties. The sole issue for the panel to decide was the correct analysis of the passing rent to arrive at a Zone A rate for the valuation.

Decision and reasons

11. To decide this appeal, the panel needed to look at the rental value at the AVD of 1 April 2015 but consider the physical locality at the Material Day of 1 April 2017.

12. The parties explained to the panel that in the 2010 rating list, a 40% allowance had been granted for disruption caused by tram works and the removal of bus stops in the locality, which commenced on 22 July 2012. No such allowance had been given in the 2017 list as the works had been completed in late 2015 to early 2016.

13. The rent on the subject property was agreed at £35,000 from 1 December 2014 for a term of 15 years, stepped for the first five years at £1,000 increments until reaching a rent of £39,000 in year five. A six-month rent-free period was given at the start of the lease.

14. Both parties agreed that in line with *Lotus and Delta Limited v Culverwell (VO) and Leicester City Council [1976] RA 141* that the passing rent on the subject property must be the starting point of the valuation. Having been agreed in December 2014, this rent was negotiated only four months before the AVD and so was valuable evidence. However, the parties had taken different approaches to the analysis of the rent.

15. Mr Cowper explained that the rent agreed on the subject property would have been affected by the works ongoing at that time and therefore he had applied a 40% premium to the rent to counteract the allowances given. He stated that other rents agreed during the works had been treated the same and referred the panel to examples of other properties in Bull Street to demonstrate that the Zone A rate applied to the subject property was not out of line with the tone in the street. He felt that the rate of £550 was correct and asked the panel to dismiss the appeal.

16. Mr Davenport argued that the rent agreed in 2014 was the best evidence of value and it should not be loaded by 40% as the VO contended. He considered that, using the stepped rents set out in the lease, the actual rent in 2017 was £37,000 and he had used this figure in his valuation. Mr Davenport highlighted that the RV in the 2017 list at £46,250 from 1 April 2017 and then £48,500 from 3 January 2019 is far higher than the actual rent being paid.

17. The panel acknowledged the parties' different approaches to the valuation. After considering the comparable properties presented, the panel noted that the Zone A rate applied to the properties in Bull Street ranged from £500/m^2 to £600/m^2 but the RV for the subject property was the highest of the examples in the table of comparable properties. The parties had explained that originally 74 and 75 Bull Street were assessed as one hereditament but had subsequently been split and let separately. 75 Bull Street had let on a new 10 year lease from 1 August 2015, four months post AVD, and had been valued with the same 40% loading and the same Zone A rate of £550/m^2. Mr Cowper stated that 83 Bull Street, a new letting for 15 years with a three month rent free period from 1 May 2013 had not been adjusted in the same way but the Zone A rate applied of £600/m^2 still supported the rate applied to the subject property.

18. After considering all of the evidence presented, the panel found that the best evidence must be the passing rent on the subject property as it was a new letting agreed close to the AVD. This was supported by the letting of 75 Bull Street at approximately the same time with the same Zone A rate. The panel was persuaded that this demonstrated the best evidence of value for this part of Bull Street. However, it acknowledged that the hypothetical and actual tenant may have negotiated a lower rent to reflect the temporary disruption for the tram works and removal of bus stops. The panel was of the opinion that the impact on the rent would not have been as significant as 40% and to load the rent for the whole term by this amount was excessive. The

Appellant had used the average rent over the first five years of the lease but made no specific adjustment for the disruption in the early years The panel concluded that the hypothetical tenant would have negotiated some reduction to reflect the temporary inconvenience of the works, but this must be balanced by the long-term benefits of the tram installation and replacement bus stops.

19. The panel therefore determined that the starting point for the rent should be taken as that for year five of the lease, £39,000. By that time, it was clear that the works would have been completed and the rent could reasonably be expected to be close to an open market figure. It was of the opinion that the rent free period and stepped rent agreed for the first five years was to reflect the temporary disruption and therefore the rent for year five would be a fair reflection of the actual value. This approach results in a Zone A rate of £460/m^2 and a final RV of £41,250.

20. In conclusion, having regard to the physical state of the appeal property and its locality at the material date of 1 April 2017, and the evidence referred to, the panel was of the opinion that the current assessment was excessive and the appeal was allowed in part.

Order

21. 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 amend the entry for 74 Bull Street, Birmingham, B4 6AD in the 2017 Rating List to £41,250 effective from 1 April 2017.

The Valuation Officer must comply with this Order within two weeks of its making.

A refund of the paid fee will now be arranged (Regulation 13E of the NDR Alteration of Lists & Appeals Regs) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

Date: 24 March 2021

Appeal number: CHG100093129