THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 list appeal; shop and premises; Lotus and Delta Ltd v Culverwell (VO) and Leicester City Council 1976 [RA 141]; tone of the rating list, rental evidence; comparable properties; mode and category of use; appeal allowed.

Re: 44-46 Mill Lane, London NW6 1NJ ("the subject property")

APPEAL NUMBER: CHG100105717

BETWEEN: Dass Appellant

(represented by JMA Chartered Surveyors)

and

Mr A Ricketts Respondent

(Valuation Officer)

PANEL: Mrs L Bryning (Senior Member)

Mrs N C Yang

CLERK: Mrs A Sloan

REMOTE HEARING: 17 August 2021

PARTIES PRESENT: Mr A Bacon (Appellant's representative)

Mr M Paterson (Valuation Officer's representative)

Summary of decision

1. The appeal was allowed, and the Rateable Value (RV) reduced to £19,250 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 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.

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. The hearing was conducted via Microsoft Teams and the panel was satisfied that both parties were fully able to participate in the hearing.

4. The appeal was brought in respect of the entry in the rating list shown as 44-46 Mill Lane, London NW6 1NJ (the subject property). The proposal was submitted by the Appellant's representative on 20 June 2019 to challenge the valuation in the compiled list of £35,500. The challenge decision notice from the Valuation Officer (VO) was dated 15 December 2020 and it reduced the RV to £29,500 with effect from 1 April 2017. The appeal against this decision was lodged with the Tribunal on 13 April 2021.

5. The antecedent valuation date (AVD) for all 2017 list rating appeals is 1 April 2015. As this appeal concerned a challenge to the compiled list entry, the material day was 1 April 2017.

6. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that the panel fully considered all the evidence presented before coming to a decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

Issue

7. The sole issue before the panel was the correct valuation to be applied for the subject property.

Evidence and submissions

8. Mr Bacon had, in his appeal submission, declared that his firm was instructed on a conditional fee basis. However, he also declared that he understood and accepted that his duty is to the Tribunal in giving his evidence and he would comply with this, regardless of whether or not the evidence supports his client's case.

9. The panel accepted this expert witness evidence on the above basis as the appeal was not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure Regulations and is allowable due to the Tribunal's rules on admissibility of evidence (reg 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial). It therefore considered the "expert" evidence and assessed what weight it should give to it in the context of the matters in issue before it.

10. The evidence bundle provided comprised all of the documents exchanged between the parties as part of the challenge process, following the Appellant's proposal to alter the entry in the 2017 rating list.

11. Mr Bacon explained that he considered the current Zone A price for the subject property, £550/m^2, to be excessive when compared to the Appellant's property on the opposite side of the street. 8 & 9 The Mansions, 33 Mill Lane had been agreed at £230/m^2 and Mr Bacon questioned how there could be such a discrepancy between the tone on opposite sides of the same street.

12. His initial proposed valuation for the subject property was based on £230/m^2 and included a 5% end allowance for step access and 10% to reflect the width to depth ratio. After considering the Respondent's evidence and comparing with assessments at 38 Mill Lane, 50

Mill Lane, 54 Mill Lane and 104 Mill Lane, Mr Bacon revised his proposed valuation to an RV of £19,250 based on a Zone A price of £360/m^2 and 10% end allowance for step access.

13. Mr Paterson was acting as advocate in this appeal, having not dealt with the challenge decision previously. He highlighted that the subject property is in a long parade of shops, as opposed to the shorter parade at The Mansions opposite. The Respondent's valuation was based on a revised Zone A price of £550/m^2 with 5% allowance for step access and 5% to reflect the width to depth ratio. He explained that the Respondent did not consider 10% was justified to reflect the step access because the subject property also has a ramp, meaning it is not subject to the same limitations for access as the example relied upon by the Appellant's representative. Mr Paterson stated that he considered the Form of Return rents (FOR) to be the best evidence and asked the panel to confirm the RV at £29,500.

Decision and reasons

14. In deciding this appeal, the panel was bound by the governing legislation. The term 'rateable value' is defined in paragraph 2(1), 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".

15. In accordance with *Lotus and Delta Ltd v Culverwell (VO) and Leicester City Council* 1976 [RA 141], the panel found that the starting point must be any rent passing on the subject property at the AVD. Neither party referred to any rent passing on the subject property so the panel concluded it must value 44-46 Mill Lane with reference to comparable retail units in the locality.

16. The VO relied on three comparable properties, 38, 50 and 54 Mill Lane. A photograph was provided by Mr Bacon of 38 Mill Lane, showing it to be an office rather than a retail shop. He stated that this property is much smaller and therefore its valuation based on £550/m^2 did not support the same tone for the subject property. The panel considered that this property was not the same mode and category of use as the subject property, so was not comparable and it placed little weight on it as evidence.

17. The Respondent's decision notice mentioned two rents on 50 and 54 Mill Lane but little detail was provided. Mr Bacon explained that he had verified the lease for 54 Mill Lane from Land Registry records but had been unable to find any record of a lease on 50 Mill Lane. He

stated that it was clear from the lease on 54 Mill Lane that it included A1 (retail) or A2 (office) use and the occupier appeared to be an office rather than retail tenant. He was of the opinion that both 50 and 54 Mill Lane are much smaller than the subject property and used as offices instead of retail, so were not comparable. No photographs were presented by either party on these properties for the panel to consider but, given the lack of any rebuttal from Mr Paterson on this point, it accepted Mr Bacon's submissions as correct.

18. The panel noted Mr Bacon's submission regarding 59 Mill Lane. He stated that this property had been reduced from a Zone A price of £550/m^2 to £450/m^2. He explained that this shop is in a different parade to the subject property, located 0.2 miles away. However, he highlighted that he would consider 59 Mill Lane to be in a better location than the subject property, along with 106 Mill Lane which had been agreed at the same rate, and therefore this would support a reduction from the £550/m^2 in the existing valuation for 44-46 Mill Lane.

19. Mr Bacon had also referred to 104 Mill Lane, a shop he considered to be larger than the VO's comparable properties, and closer in size to the subject property. He stated that the lease he had obtained for 104 Mill Lane showed a rent of £16,000 agreed in September 2013 for 15 years. He analysed this to £360/m^2.

20. Although not considered very comparable, Mr Bacon also referred to the lease for 54 Mill Lane, agreed from October 2014 at £13,000. This he stated analysed to £409/m^2 but, when adjusted by 20% to reflect the A2 use, produced a Zone A rate of £360/m^2 for the retail use. The valuation breakdown included in the evidence from the VOA records showed a Zone A price of £600/m^2, which Mr Bacon assumed was an error. No comment was made on this in the decision notice by the VO or at the hearing.

21. The panel noted that both 3-7 The Mansions and 8-9 The Mansions were valued at £230/m^2. Mr Bacon stated that 3-7 The Mansions is a shop of similar size to the subject property and had been agreed at the same tone as 8-9 The Mansions. Mr Bacon acknowledged that the assessments in The Mansions, opposite the subject property, were in a smaller parade and would potentially command a lesser rent. Therefore, he had considered the rents that he could verify elsewhere in Mill Lane and concluded that the correct Zone A price for the subject property was £360/m^2, being between the rate of £450/m^2 at 59 Mill Lane and £230/m^2 at The Mansions.

22. After considering the examples of 54 Mill Lane and 104 Mill Lane, Mr Bacon conceded that these are quite shallow shops and decided that an allowance for width to depth ratio was not required for the subject property. However, he contended that the step access justified a 10% allowance and referred the panel to the example of 62 Fortune Road where 10% allowance had been included in the valuation.

23. After considering the evidence presented by the parties, the panel found there was limited evidence from the Respondent in this case. The decision notice did not dispute Mr Bacon's assessment that some of the Respondent's comparable properties were offices rather than shops and no comment was made on his analysis that differed from the VO's figures. Mr Paterson did not comment at the hearing, other than to assert that the FORs from March and October 2014 provided the best evidence.

24. The panel concluded that, in the absence of any evidence to the contrary, the assessments for offices were not comparable to the subject property and, compared with the examples presented by the Appellant's representative, the Zone A rate of £550/m^2 seemed excessive

for the subject property. The panel considered that Mr Bacon's rate, between that of 59 Mill Lane and The Mansions, was correct and therefore his Zone A price was accepted.

25. Both parties had commented on the example of 62 Fortune Green Road where an allowance of 10% had been given for the step access. The Respondent argued that, because the subject property also has ramp access, only 5% should be given. The panel concluded that, with only one example to consider, a reduction was justified for the step access. The Respondent had provided no examples for comparison where a lower end allowance had been given where ramp access was also available. The panel concluded a 10% allowance was correct and the appeal was allowed.

Order

26. 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 44-46 Mill Lane, London NW6 1NJ in the 2017 Rating List to £19,250 effective from 1 April 2017.

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

    Any fee paid will be refunded in full in accordance with regulation 13E.

Date: 7 September 2021

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