THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; shop and premises; price per m² in dispute; rental evidence; comparable properties; appeal dismissed.

Re: Bst 22, Sir Thomas Street, Liverpool, L1 6BW

APPEAL NUMBER: CHG100107427

BETWEEN	Mr M Sibson	Appellant
	and	
	Mr R Roberts (Valuation Officer)	Respondent

PANEL: Dr H Freeman (Senior Member)
Ms J Morton

CLERK: Mrs A Keohane

REMOTE HEARING ON: Friday 13 November 2020

APPEARANCES: Mr M Sibson, the appellant
Mr D Hetherington representing the Valuation Officer

Summary of decision

1 Appeal dismissed. The existing assessment of £18,500 rateable value (RV) was confirmed 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.

4 This was a 2017 rating list appeal. Bst (basement) 22, Sir Thomas Street, Liverpool, L1 6BW, (the 'appeal property') was entered in the 2017 rating list as 'shop and premises', £18,500 RV with effect from 1 April 2017.

5 The Challenge proposal submitted on behalf of Mr Sibson was received by the Valuation Officer on 28 June 2019 and had been made on the grounds that the RV shown in the rating list on 1 April 2017 was wrong. The Valuation Officer issued a Challenge case decision notice on 31 October 2019, stating that based upon the evidence and information available, the rating list entry was considered to be reasonable and there would be no change made to the list.

6 In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal was made on the grounds that the valuation for the hereditament was not reasonable. The appeal was received by the Tribunal on 20 February 2020.

7 The appeal property is situated on Sir Thomas Street, on the periphery of Liverpool city centre in a secondary retail location, approximately 0.3 miles from the Liverpool One Shopping Centre and 0.5 miles from the central business district of Liverpool. The basement property is of 189.22m^2, has some display at ground floor level and is accessed from the street via stairs. The appellant trades as Copplestones Bridal, a bridal dress importer and retailer (with ink cartridges telesales).

8 Mr Sibson's original Challenge was submitted on his behalf by a rating representative. Following the issue of the Challenge case decision notice, Mr Sibson took over the matter himself and in submitting his appeal to the Tribunal provided a new statement of case, photographs and appendices. The Valuation Officer formally objected to this evidence, as it had not been exchanged during the Check and Challenge process as required by regulations. Following further correspondence, the parties agreed in writing that each could exchange further evidence in relation to this appeal. Following the agreed exchange, Mr Sibson provided further information prior to the hearing date. The Valuation Officer confirmed in writing that he did not object to this information being admitted on the day. Both parties confirmed verbally at the hearing that they were happy for the hearing to proceed, based on all the information exchanged in this appeal.

9 In order to assist Mr Sibson and with the agreement of the parties, the panel varied the model procedure and asked Mr Hetherington to present his evidence first.

10 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 item of evidence, should not be construed as it having been overlooked

Issue

11 A number of areas of dispute had initially been identified; however, at the hearing, the parties confirmed that the only matter left for the panel to determine was the price per m^2 to be adopted in the appeal property's rating assessment.

12 Mr Sibson was seeking a revised valuation of £9,750 RV based on £52/m^2. The Valuation Officer considered the present assessment of £18,500 RV based on £100/m^2 was reasonable.

Evidence and submissions

13 Mr Sibson had provided a rent for the appeal property of £9,000 per annum (pa). Mr Hetherington argued that this rent was of limited use, as the premises were owned by the appellant by virtue of a 150-year lease purchased in November 2012 for £150,000. The rent quoted was not an open market rent and had been calculated by applying a yield of 6% to the purchase price.

14 Following receipt of a Check case in relation to Bst 20 Sir Thomas Street, its valuation had been amended from a retail to office basis as requested in the Check. The revised valuation was based on £42.50/m^2, which had produced an assessment of £9,600 RV. Having revisited this agreement, Mr Hetherington believed it had been made in error and the assessment was recalculated on a retail basis.

15 In order to maintain consistency, a number of assessments in the appeal property's locality had been reviewed. These included basement properties on Stanley Street within the same mode or category of occupation as the appeal property. In light of the rental evidence for Bst 14-16 Stanley Street and Bst 20 Stanley Street, together with that of a property on Tithebarn Street, the assessments of the Stanley Street properties were recalculated based on £100/m^2. The rating list had been amended in May 2020 and no Challenges had been made against these alterations.

16 Mr Hetherington also referred to a wedding dress shop mentioned by the appellant in the Port of Liverpool Building. Wed2B, occupied The Brunswick Suite, which was subject to a rent from 2015. This property had been valued within an office scheme, in line with other office suites in the building; however, analysing the rent on a retail basis resulted in a price of £105/m^2.

17 Mr Hetherington's decision to increase the assessments of properties on Stanley Street was based on rental evidence from 2016. To establish any rental growth between 2015 and 2016, rents set within this period for properties on Dale Street were considered. This evidence showed rental growth in the region of 5%. Reducing the 2016 Stanley Street rents by this percentage still produced a price per m^2 in excess of the £100/m^2 adopted for properties in this locality.

18 Mr Sibson proposed a revised valuation of £9,750 RV for the appeal property based on £52/m^2. He referred to the Lands Tribunal case of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141, which set out that when weighting evidence, the starting point was the rent of the subject property. The appeal property's annual rent was £9000; this figure was used in management accounts and was based on the purchase price in 2012, with a percentage return of 6%.

19 Mr Sibson referred to the following properties in support of a lower valuation for the appeal property:

i. Bst 20 Sir Thomas Street, the next-door property. This was similar to the appeal property, in the same location and had been revalued on an office basis, giving a revised assessment of £9,600 RV.
ii. Wed2B, a similar basement premises in The Port of Liverpool Building. Its valuation was based on £56.25/m^2.
iii. The nearest comparable basement properties were in Stanley Street, three streets away and in a busier area. These assessments were based on main space prices of between £40/m^2 and £85/m^2.
iv. The comparable property put forward by Mr Hetherington on Tithebarn Street was not directly comparable; given it was in the heart of the commercial district.
v. Mr Hetherington's comparable properties on Dale Street appeared to have been selectively chosen. Dale Street was one of the main commercial streets and the properties were all within the commercial district.
vi. In noting Mr Hetherington's comparable properties on Dale Street, the appellant provided his own, namely, 135-137 Dale Street, a property of 221.6m^2; 100m^2 of which was at ground floor level and 120m^2 at basement level. This property was in a busier location and assessed at £8,100 RV.

20 Mr Sibson confirmed that the appeal property had been the subject of a valuation tribunal decision following a 2010 rating list appeal. Its assessment had been reduced from £26,500 RV to £18,500 RV, the revised assessment being based on £100/m^2. In reaching the decision, the panel accepted that the best comparable properties were located on Stanley Street and not those within the commercial district, as contended for by the Valuation Officer.

21 Mr Sibson disagreed that the increased assessments had been accepted by ratepayers. Having spoken to the occupier of Bst 20, he had been advised that the increased assessment had not yet been Challenged due to the Covid pandemic, but it would be. Mr Sibson suspected that this would also apply to the other ratepayers subject to increased rate liability.

22 Mr Sibson queried why different rates were used to value properties; he considered that the rent a property would achieve would very likely be the same regardless of what use the property was put to, office or retail.

Decision and reasons

23 In arriving at its decision, the panel was 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.

24 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).

25 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 was 1 April 2017.

26 The appeal property was a retail premises and the panel agreed that it should be valued on a retail basis. As it was a basement property, it was assessed on an overall basis, as opposed to a property trading at ground floor level, which would more likely be valued by the zoning method of valuation.

27 Mr Sibson had referred to the Lands Tribunal judgment of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA, 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.

28 As outlined above and as a starting point, the panel had regard to the rent quoted for the appeal property. However, it did not consider it appropriate to use this rent in isolation to assess the appeal property for rating purposes. The rent was not derived from an open market transaction and was therefore untested and could be viewed as being between connected parties. The level of rent had been achieved by calculating a 6% return on the purchase price paid in 2012, some three years prior to the AVD, and was a figure assumed for accounting purposes only. Mr Sibson had confirmed that no rent was actually paid.

29 Having attached very little weight to the appeal property's rent, the panel went on to consider the available rental evidence and the assessments of the comparable properties referred to by the parties, as also set out in the *Lotus & Delta* decision.

30 Bst 14-16 Stanley Street was a shop and premises of 91.30m^2. It had a rent of £10,000 per annum (pa), effective from 1 February 2016. This reflected a new letting for a six-year term, with yearly rent reviews on a full repairing and insuring (FRI) basis. It analysed to a main space price of £109.52/m^2.

31 Bst 20 Stanley Street, was a shop and premises of 176.34m^2. The adjusted rent equated to £17,300 pa, effective from 1 November 2016 and analysed to £114.90/m^2. The rent was in respect of a new letting on a 10-year term with five- yearly rent reviews and a two-month rent free period that had been disregarded for fitting out purposes. The landlord was responsible for repairs and insurance.

32 The Brunswick Suite, Port of Liverpool Building, was a unit of 356.34m^2 occupied as a shop and premises. It had been valued within an office scheme in line with office suites in the same building. The rent of £50,473 pa was a stepped rent, effective from 1 August 2015, with the landlord being responsible for external repairs. When the rent was analysed on a retail basis, it equated to £105.07/m^2,

33 11 Tithebarn Street, a shop and premises of 96.10m^2. It was subject to an adjusted rent of £10,622 pa with effect from May 2013 and this analysed to

£151.63/m^2. The rent reflected a new letting for a period of eight years with five- yearly rent reviews and included a four-month rent free period, three months of which had been disregarded for fitting out purposes. A £5,000 premium had also been amortised over the length of the lease.

34 Bst 20 Sir Thomas Street (215.26m^2) had its 2017 rating list assessment reduced to £9,600 RV on an office basis. The appellant had sought a reduction in the appeal property's assessment, based upon its rent but also in line with the reduced assessment adopted for this next-door property. The Valuation Officer contended that the alteration of the assessment of Bst 20 had been done in error and it had been reverted to a retail valuation, based on £100/m^2.

35 135-137 Dale Street, a shop and premises of 221.6m^2, 100m^2 of which was at ground level and 120m^2 at basement level. Mr Sibson argued that this property had a good shop front, was in a better location and subject to more traffic and footfall but had a substantially lower rateable value. After considering this property, the panel did not accept that it was truly comparable; given it was not a basement property but traded from ground floor level with the basement being used for storage only.

36 After due consideration of all of the evidence, the panel rejected the rental evidence for The Brunswick Suite. Although this property was used as a shop and premises, it was within a majority of office occupiers and had been valued on an office basis. The rent for this property may have been set at a level to compete with the rents of office suites in the same location. Additionally, the rent was stepped and would require adjustments bring it in line with the definition of rateable value.

37 The panel also decided to attach little weight to the rent of 11 Tithebarn Street that had been agreed in 2013, some distance from the AVD. The location plan confirmed this property was within the commercial district, a higher value area. Retail properties within this area were valued at £150/m^2, as confirmed in the assessment schedule provided by Mr Hetherington.

38 The panel found the best evidence in this appeal to be the rental information for Bst 14 -16 Stanley Street and Bst 20 Stanley Street, the closest in size to the appeal property being Bst 20 Stanley Street. The rents gave a reliable indication of the rental potential of properties within this area in 2016, which the panel considered was close enough to the AVD to be relevant in this appeal. Mr Sibson's plan confirmed these comparable properties were only few streets away from the subject, making them suitable comparable properties in terms of location. Upon analysis, these rents had equated to main space prices of £109.52/m^2 and £114.90/m^2 respectively. Having regard to this, the panel was satisfied that these rents demonstrated that the £100/m^2 adopted in the appeal property's assessment was not unreasonable.

39 Mr Hetherington had used rents for properties in Dale Street to try to establish whether there had been any rental growth between 2015 and 2016. This evidence suggested that there had been growth in the region of 5% during this period. The panel found that if the rents of Bst 14-16 Stanley Street and Bst 20 Stanley Street were adjusted by this percentage, main space prices of around £104/m^2 and £109/m^2 respectively, were produced. Again, this did not illustrate

that the price of £100/m^2 adopted in the appeal property's assessment was excessive.

40 The panel understood Mr Sibson's frustration in finding that the comparable property assessments he was relying on had been increased by the Valuation Officer. However, the panel had to determine a reasonable rating assessment for the appeal property based on the available evidence. The panel concluded that the available evidence demonstrated that the valuation of the appeal property at £18,500 RV, based on £100/m^2 was not unreasonable.

41 Having regard to the above, the appeal was dismissed.

Date: 1 December 2020

Appeal Number: CHG100107427