THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal (2017 list); Local Government Finance Act 1988; Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; Shop and premises; Price per m^2 in dispute; Appeal allowed in part.

RE: 23-25 Baldwin Street, Bristol, BS1 1LT

APPEAL NUMBER: CHG100112484

BETWEEN:	Rufa Limited	Appellant
	and	
	The Valuation Officer	Respondent

PANEL: Mr M Smith (Presiding Senior Member)
Mr W Read (Senior Member)

CLERK: Mr A Johnson Tech IRRV

ON: 9 November 2021

APPEARANCES: Mr D Johnstone of Colliers International (for the appellant)
Mr D Greaves (for the Valuation Officer)

REMOTE HEARING

DECISION AND STATEMENT OF REASONS

Regulations 36 and 37 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009

Summary of decision

1. This appeal was allowed in part. The Panel determined that the rateable value of 23-25 Baldwin Street, Bristol, BS1 1LT (hereinafter referred to as the 'appeal hereditament') was £35,750 with effect from 1 April 2017.

Introduction

2. This is not intended to be an exhaustive, contemporaneous, or verbatim record of the proceedings and must not be construed in this manner. The parties can be assured that all of the evidence presented was fully considered by the Panel before coming to its decision. The absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

3. This appeal had been brought pursuant to regulation 13A of the Non-Domestic (Alterations of Lists and Appeals) (England) Regulations 2009. The appellant had challenged the Valuation Officer's decision that the appellant's proposal was not well-founded.

4. The appellants' proposal sought alteration to the 2017 non-domestic rating list on the grounds that the rateable value for the appeal hereditament on the compiled date of 1 April 2017 were not reasonable. The rateable value was £41,500.

5. Mr Johnstone 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), Mr Johnstone stated that he was not instructed under a contingency based fee.

6. Mindful of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO0* [2018] UKUT (LC), the Panel accepted the expert witness evidence on the above basis as the appeal was not considered to be complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure Regulations and was allowable due to the Tribunals' rules concerning admissibility of evidence (regulation 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial).

7. It was therefore appropriate for the Panel to consider the 'expert' evidence and assess what weight, if any, to give it in the context of the issue before it.

Remote hearings

8. 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.

9. 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 Panel were satisfied that the parties present at the remote hearing were able to fully participate in the proceedings and that it was just and equitable for a remote hearing to be held.

Issue

10. The issue in dispute was whether the valuation for the appeal hereditament following the appellant's challenge was reasonable and, in particular, the price per m^2 to be adopted in the valuation of the appeal hereditament.

Evidence and submissions

11. The Panel considered a joint evidence bundle which included all of the documents exchanged between the parties as part of the challenge process.

12. The Panel followed the VTE's model procedure and Mr Johnstone presented the appellant's case first.

13. The appeal hereditament was part of a parade of shops and was held on a ten year lease from 24 June 2014. The rent for the first year was £18,750 and £37,500 for years two to five (to the rent review date) with a two month rent free period. The net effective rent was £230 Zone A. Mr Johnstone sought a revised rateable value of £20,000 which was based upon a Zone A of £140 per m^2 with an allowance for the non-standard frontage (2.5%) and the size (5%). This, he said, was calculated as follows:

Ground	Retail Zone A	88.00	£129.68	£11,412
Ground	Retail Zone B	74.23	£64.84	£4,813
Ground	Retail Zone C	8.03	£32.42	£260
Ground	Public toilets	5.87	£13.30	£78
Ground	Internal storage	6.91	£13.30	£92
Ground	Restaurant	42.1	£16.63	£700
Ground	Office	10.65	£16.63	£177
Ground	Internal storage	13.65	£13.30	£182
Ground	Staff toilets	8.1	£0.00	£0
Basement	Internal storage	94.21	£6.65	£626
Basement	Staff toilets	11.18	£0.00	£0
	Total m^2:	362.93		£18,340
	Air con	257.5	£7.00	£1,803
				£20,143
			RV say:	£20,000

14. Mr Johnstone advised that the parties had agreed the non-standard frontage allowance of 2.5% and that they had also agreed an increase in respect of the size allowance from 5% to 10%.

15. Mr Johnstone produced information relating to other rents which, he said, supported his opinion that the rateable value of £41,500 was unreasonable. These are summarised hereunder:

11 Baldwin Street

- Twenty year lease from 18 February 2013 at £30,000 per annum
- Analysed and agreed with the Valuation Officer to £396 p/m^2 Zone A

27-29 Baldwin Street

- Fifteen year lease from 8 April 2015 with a stepped rent of £5,000 for year one, £10,000 for year two and £15,000 for year three
- Analysed to £144 p/m^2 Zone A
  (analysed to £141.42 p/m^2 Zone A by the Valuation Officer)

The leaseholder vacated the hereditament, and a new lease was agreed:

- Fifteen year lease from 28 November 2016 with a stepped rent of £7,500 for year one, £10,000 for year two and £10,000 for year three
- Analysed to £132 p/m^2 Zone A

Mr Greaves had analysed the appeal hereditament to £268.08 p/m^2 to reflect the amended size allowance (from 5% to 10%), and he argued that this was not unreasonable. Mr Greaves also produced information in respect of other retail units in the locality which, he said, supported a tone of £320 p/m^2. These are summarised hereunder:

Address	Total area m^2	Total area ITMS m^2	Effective date of rent	Analysed rent £ p/m^2	Asst. Unit Value £ p/m^2
23-25 Baldwin Street*	362.93	131.01	24 Jun 14	£253.96	£320.00
3 Alliance House	21.50	20.49	01 Oct 14	£387.60	£320.00
35 Baldwin Street	24.44	17.13	01 Apr 15	£351.37	£330.00
49 Baldwin Street	66.50	38.03	24 Mar 16	£152.51	£330.00
12 Baldwin Street	161.80	46.48	01 Sep 14	£306.58	£320.00
4 Alliance House	83.90	51.38	24 Jun 14	£352.78	£320.00
Units 2 & 3 Pivot & Mark	180.90	101.90	01 Jan 18	£326.30	£300.00

* the appeal hereditament

16. Mr Johnstone argued that the Valuation Officer's comparable hereditaments were all smaller than the appeal hereditament, and so not entirely comparable.

Decision and reasons

17. Paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988 provides that 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 based upon three assumptions. These assumptions are:

    (a) that the tenancy begins on the day by reference to which the determination is to be made;

    (b) 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) 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.

18. 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.

19. The material day (the date by which physical factors must be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (as amended). The material day in respect of the appeal hereditament is 1 April 2017.

20. The Panel was also guided by the leading judgment in the Lands Tribunal case of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141. This case set out the six propositions to have regard to when considering the weighting of evidence and expert opinion. These are:

    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.

21. Having regard to *Lotus & Delta*, the Panel considered the rental evidence in respect of the appeal hereditament as a starting point. In doing so, the Panel noted that it commenced on 24 June 2014, approximately nine months prior to the AVD and on a stepped basis. In the circumstances, the panel did not find this to be completely reliable when determining the rateable value of the appeal hereditament. However the Panel considered the analysed rent at £253.96 to be a guide when determining the correct level of value.

22. The Panel then considered the rental evidence of other hereditaments within the locality which had been provided by the parties.

23. In doing so, the Panel attached some weight to the rental evidence relating to 27-29 Baldwin Street. This had been set very close to the AVD (on 8 April 2015). This was found to provide the best evidence in respect of passing rents close to the AVD when determining the rateable value of the appeal hereditament. Whilst this was also a stepped rent, the Panel was of the opinion that it provided helpful assistance when determining the rateable value of the appeal hereditament. The Panel noted that Mr Johnstone, for the appellant, had analysed the rent to £141.42 p/m^2 whilst Mr Greaves, for the Valuation Officer had analysed it to £144.00 p/m^2. However the Panel was aware that this hereditament was significantly smaller than the appeal hereditament. The Panel also noted that the parties had agreed two allowances, one of 2.5% to reflect the non-standard frontage and 10% for size.

24. Mr Greaves referred to a number of comparable hereditaments located in Baldwin Street and the Panel decided that it could not give any significant weight to the rental information in respect of numbers 3, 35 and 49 or Unit 4 Alliance House. This was because they were significantly smaller than the appeal hereditament, ranging from 21.5m^2 to 83.9m^2 and their analysed rents varied from £152.51 p/m^2 to £387.60 p/m^2. The Panel noted and accepted the

comments regarding 49 Baldwin Street which was said to be in a poor state of repair which may have accounted for the £152.51 p/m^2.

25. Given these rents the Panel found that the rent of 27-29 Baldwin Street appeared to be out of line with rents of comparable hereditaments of similar size within the locality.

26. When considering the remaining comparables, the Panel noted that 12 Baldwin Street, at 161.8m^2 had a rent of £15,000 per annum from 1 September 2014, which had been adjusted by the Valuation Officer to £14,250 as the landlord was responsible for external repairs, and had been analysed to £306.58 p/m^2 with an adopted Zone A rate of £320.00 p/m^2. Units 2 and 3 Pivot and Mark was measured at 180.9m^2 with a rent of £35,000 per annum from 1 August 2018 which had been similarly adjusted by the Listing Officer to £33,250 and analysed to £326.30 p/m^2. The adopted Zone A rate was £300 p/m^2.

27. The Panel was of the opinion that due to the significantly larger size of the appeal hereditament when compared to 2 and 3 Pivot and Mark the price per m^2 would be lower. Whilst the Valuation Officer had conceded a 10% allowance for size, the Panel had regard to the value adopted for this comparable hereditament. The rent for 2 and 3 Pivot and Mark had been set more than three years post AVD and the rent of the appeal hereditament nine months prior. The Panel considered that the rent achieved would sit somewhere between the two but with further account being taken for an element of quantum given the larger size of the appeal hereditament and the superior location within the parade of 2 and 3 Pivot and Mark.

28. The Panel was not, due to the relatively low number of appeals determined by the VTE to date, satisfied that a tone for the locality had been established and it therefore placed little weight upon this argument. Indeed whilst there were a number of properties valued at £320 per m^2 the Panel also noted that shops in this area ranged from £300 to £330 per m^2.

29. After fully considering the evidence presented by the parties, the Panel determined that the appeal hereditament would achieve a rental value, in terms of Zone A, below those of the Valuation Officer’s comparables (which were all significantly smaller). In having particular regard to the appeal hereditament and the next property closest in size, the Panel concluded that a hypothetical tenant would, at the AVD, make a reasonable rental bid of £280 p/m^2 which, after allowing for the agreed allowances totalling 12.5%, would result in a Zone A rate of £245 p/m^2. This results in a rateable value for the appeal hereditament of £35,750 as set out below.

Ground	Retail Zone A	88.00	£245.00	£21,560
Ground	Retail Zone B	74.23	£122.50	£9,093
Ground	Retail Zone C	8.03	£61.25	£492
Ground	Public toilets	5.87	£25.13	£148
Ground	Internal storage	6.91	£25.13	£174
Ground	Restaurant	42.1	£31.42	£700
Ground	Office	10.65	£31.42	£335
Ground	Internal storage	13.65	£25.13	£343
Ground	Staff toilets	8.1	£0.00	£0
Basement	Internal storage	94.21	£12.56	£1,184
Basement	Staff toilets	11.18	£0.00	£0
	Total m^2:	362.93		£34,027
	Air con	257.5	£7.00	£1,803
				£35,830
			RV say:	£35,750

Order

30. In accordance with regulations 38(4) and 38(9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the VTE orders the Valuation Officer to alter the valuation list within two weeks of the date of this order to show the entry in the rating list for the appeal hereditament to £35,750 rateable value with effect from 1 April 2017.

Refund of appeal fees

31. The appellant is entitled to a refund of the appeal fees in accordance with regulation 13E of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009. This will be refunded as soon as possible.

Date: 29 November 2021

Appeal Numbers: CHG100112484