THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating; 2017 Rating List; Shop and premises; Price per square metre; Rental evidence; Assessment of comparable properties; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal dismissed

Re: 266 Old Brompton Road, London SW5 9HR

APPEAL NUMBER: CHG100113699

BETWEEN:	Libertybelle UK Limited	Appellant
	and	
	Mr A Ricketts (Valuation Officer)	Respondent

PANEL: Mrs R White (Senior Member)

CLERK: Miss K Hendry IRRV (Tech)

REMOTE HEARING on Tuesday 8 December 2020

APPEARANCES: Mr J McCarthy of Altus Group Ltd (Appellant's Representative)
Mr C Cates (Valuation Officer's Representative)

Summary of decision

1. Appeal dismissed. I confirmed the rateable value (RV) of £52,500 with effect from 1 April 2017.

Introduction

2. This appeal has been brought in respect of the following: 266 Old Brompton Road, London SW5 9HR 1TE which was entered in the 2017 rating list as "shop and premises" at £52,500 RV effective from 1 April 2017.

3. Following the challenge submitted, Mr McCarthy proposed that the RV should be reduced to £42,500 with effect from 1 April 2017.

4. The appellant's challenge proposal to the Valuation Officer was made on 25 July 2019. The Valuation Officer issued a challenge decision on 21 August 2020, which stated that the rating list entry was considered to be reasonable, and therefore there would be no amendment made. The appellant's appeal to the Valuation Tribunal for England (VTE) was received on 24 September 2020, and made on the grounds that the RV is excessive.

5. 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.

6. 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.

7. In accordance with the Tribunal's Business Arrangements, I have been authorised to consider and determine this appeal alone.

8. Mr McCarthy 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 McCarthy declaration of truth included a statement that he was instructed under a contingency based fee.

9. Mr McCarthy declaration confirmed that he understood and accepted that his duty was to the Tribunal in giving his evidence and he would comply with this as well as the requirements of his professional body regardless of whether or not the evidence supported his client's case.

10. I 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 was 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).

11. I therefore considered the "expert" evidence and attached such weight to it as I saw fit.

12. The appeal property is a retail shop unit on the ground and basement levels of a 1950's residential block. It is located on Old Brompton Road near the crossroads with Earls Court Road and a short drive from Junction 1 of the M4. Earls Court Underground Station lies within walking distance with Kensington Railway Station also nearby.

13. 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 myself before coming to my decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

Issue

14. The issue was the correct RV to be attributed to the appeal property in the 2017 Rating List.

Evidence and submissions

15. The appellant's representative, Mr McCarthy, had provided the Tribunal with both parties' submissions.

16. Mr McCarthy was seeking a revised RV of £42,500 and relied on the following evidence:

a. The lease on the appeal property is an open market transaction, entered into approximately 6 months before the antecedent valuation date (AVD) of 1 April 2015. It is therefore the best indicator of rental value. Therefore, the RV should be reduced to in line, resulting in a revised Zone A rate of £725/m^2 from £900/m^2. Or, £775/m^2 allowing for five months rental growth leading up to AVD which equates to an RV of £45,500

b. The appeal property is held on a ten year lease effective from 22 August 2014 with a rent review in the 5th year. The initial rent is £42,500 until a review in 2019. Analysing this rent it equates to £722.66/m^2, which supports an unadjusted rate of £725/m^2.

c. Mr McCarthy referred to the following retail shop properties;

Address	RV	Area/M 2	ITMS	Effective Date of Rent	Rent	UAR/M 2	VOA Analysed Rent
266 Old Brompton Road, London (Appeal property)	£52,500	143.6	58.81	1/11/2014	£42,000	£900	£714.16 (Rep analysed to £722.66)
276-278 Old Brompton Road	£30,000	67.68	45.37	1/6/2016	£41,500	£900	£962.94
255 Old Brompton Road	£48,250	134.8	48.33	6/12/2014	£45,000	£1000	£931.10
277 Old Brompton Road	£32,500	127.6	35.28	24/12/2015	£30,000	£925	£850.34
232 Old Brompton Road	£32,000	118.63	34.7	25/4/2015	£46,000	£925	£1,323.65
279 Old Brompton Road	£42,750	66	45.33	9/10/2015	£47,250	£925	£1,016.94

d. With the exception of 276/278 Old Brompton Road the rents provided by the Valuation Officer are from different parades and should not be compared to the appeal property. This is because the building is not as attractive as the others given that it is ex local authority. The other nearby buildings were all of a Victorian era and brought a more high class imagine of shops such as boutiques type shops. Whilst 276/278 Old Brompton Road was in the same parade and was a new lease the lease was dated July 2016 some 15 months after the AVD which meant little or no weight could be placed on the rental value.

e. 232 Old Brompton Road is on the other side of the A3220 and should be disregarded as it is in another location furthest away from the appeal property. Some of the properties were also located on corner locations with double frontage but no uplift had been applied.

17. To support the RV in the 2017 list, the Valuation Officer relied upon the following evidence;

a. Mr Cates stated that when considered in isolation the rent on the appeal property does appear to suggest that the current RV is too high. However, this is a lease renewal from January 2009 where the rent was also set at £42,000 per annum. So the landlord has not sought an increase. Therefore, in accordance with the Lands Tribunal judgment of *Lotus and Delta v Culverwell (VO)* [1976] it is necessary to rely on a basket of evidence. This provides a clearer picture of the market as at the AVD.

b. Whilst shops are usually valued on a parade by parade basis, where the evidence suggests this, the Valuation Office has considered evidence on neighbouring parades. This is because there is little evidence on the appeal property's parade. All the rental evidence provided are for shops within the immediate locality and are all on Old Brompton Road. They are similar in terms of location being either on the same parade or on a neighbouring parade. There is very little evidence of new lettings.

c. 276-278 Old Brompton Road is one other letting which is on the same parade as the appeal property. It has a rent of £41,500 per annum which was agreed in July 2016 as a result of a new letting. This analyses at £963/m^2. This property is the closest to the appeal property and does not reflect that ex local authority are of lesser value.

d. 255 Old Brompton Road, a rent of £45,000 per annum is as a result of a rent review in December 2014. It is located on the parade of shops across the road but further down Old Brompton Road. This analyses at £931/m^2.

e. 277 Old Brompton Road, the rent was agreed at £30,000 per annum on 24 December 2015 as a result of a rent review. This analyses at £850/m^2.

f. 232 Old Brompton Road, the rent was agreed at £46,000 per annum as a result of a rent review on 25 April 2015. This analyses at £1,325/m^2.

g. 279 Old Brompton Road, the rent was agreed at £47,250 per annum as a result of a new letting on 9 October 2015. This analyses at £1,016/m^2.

h. Given the rental information above, the rent on the appeal property appears to be low in comparison. As no rents were agreed at the AVD, those agreed before and closely after must be considered. The basket of evidence supports the currently level of £900/m^2.

Decision and reasons

18. After due consideration of all of the evidence submitted by the parties, I determined that the appeal should be dismissed.

19. In deciding this appeal I was governed by rating legislation laid down by Parliament which defines Rateable Value: Schedule 6 to the Local Government Finance Act 1988, as amended by Section 1(2) of the Rating (Valuation) Act 1999, defined that the Rateable Value of a non-domestic property shall be taken to be the amount equal to the rent at which it was estimated the property might reasonably be expected to let on a year to year basis on these three assumptions:

i. The first assumption is that the tenancy begins on the day by reference to which the determination is to be made;

ii. 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; and

iii. the third assumption is that the tenant undertakes to pay all the 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. For the 2017 rating list the 'day by reference to which the determination is to be made' is the AVD of 1 April 2015. Economic factors must be assumed to be as they were at that date for the purposes of estimating RV. Apart from the statutory assumptions as to reasonable repair, matters affecting the physical state of the hereditament, and the physical state of its locality, are taken to be as they actually were at the "material day". In determining any appeal under the above hypothesis, it is necessary to have regard to matters referred to in Paragraph 2 (7) of Schedule 6 to the Act, those being, broadly, the physical nature of the property and its locality, as they stood at the 'material day'. This date is determined in accordance with the grounds of the proposal giving rise to the appeal. The material day for the purposes of this appeal is 1 April 2017.

21. In order to determine the correctness or otherwise of the assessment of the appeal property, I looked at the evidence available.

22. I found authoritative guidance in the Lands Tribunal's judgment in *Lotus and Delta Ltd v Culverwell (VO) & Leicester City Council* (1976) RA 141, regarding the weighting of evidence. In all cases, the passing rent on the appeal property should be used as the starting point in its consideration of the RV for the appeal property. The more closely that rent matched the rating hypothesis, then the more weight should be attached to it.

23. The appeal property had a rent of £42,000 pa, which analysed to £722/m^2. No evidence established that the parties were connected, that the rent was not an arm's length or that the rent did not reflect the statutory assumptions. It was agreed five months prior to AVD and it was a lease renewal rather than a new letting. This seemed to satisfy the first and second propositions of the Lotus decision.

24. The third proposition of the Lotus decision is that where rents of similar properties are available they too are properly to be 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 hereditament. I therefore considered the appeal property rent in line with the basket of evidence of other rents in the locality.

25. The only rental evidence from the same parade of shops was 276-278 Old Brompton Road. This rent was agreed in July 2016 some 15 months after the AVD. Whilst this date might in other circumstances mean that little or no weight should be attached to the rental evidence the fact that the property was in the same parade, was a new lease that conformed to the statutory assumptions and principles did mean some weight could be applied to this evidence. This property had a rent of £41,500 per annum which analysed at £962.94/m^2.

The analysed rent for this property supports the existing unadjusted main space rate applied to the appeal property of £900/m^2 and it was within close proximity to the appeal property.

26. The analysed rent of the appeal property on 22 August 2014 was £723m^2 that Mr McCarthy increased to £775m^2 (8%) at the AVD. No evidence supporting such an increase was provided such as any valuation increases between the 2008 and 2015 AVD dates in the parade particularly for 276/278 and seemed at variance with the fact that the appeal rent had not increased from 2009 to 2014. The analysed rent on the adjacent shop at 276/278 in the same parade at July 2016 was £963m^2, the percentage differences to the appeal property being 25% and 20% that seemed material. Against the assessed rate of £900m^2 the appeal property was 20% lower whilst the adjacent shop was 7% higher despite the dates being 6 and 15 months before and after the AVD. Adjacent shops in the same parade might be expected to show a consistent relationship yet there seemed to be a divergence that was not addressed or explained. One might also expect that if £775m^2 was the correct rate at the AVD for the parade as proposed by Mr McCarthy adjacent parades would reflect a similar value.

27. There were two comparable properties in the parade opposite the appeal property. The analysed rent of 279 Old Brompton Road that was 6 months after the AVD was £850 whilst the analysed rent of 277 Old Brompton Road that was a new lease 8 months after the AVD was £1,017m^2. In the parade diagonally opposite the analysed rent of 255 Old Brompton Road 4 months before the AVD was £931/m^2. All these comparable properties had been assessed for rateable value purposes at £925/m^2.

28. The fifth proposition of Lotus is that In the light of all the evidence an opinion can then be formed of the value of the appeal hereditament, the weight to be attributed to the different types of evidence depending on the one hand on the nature of the actual rent and, on the other hand, on the degree of comparability found in other properties.

29. The analysed rent of the appeal property was £723m^2. None of the other comparable properties have such a low analysed rent. The lowest comparable in other parades was £850m^2 whilst the comparable in the same parade had an analysed rent of £963m^2 although based on a date 15 months after the AVD. No evidence of rental value movement before and after AVD had been provided.

30. I considered that given their location, physical style, use etc the comparable properties could be used to form an opinion about the value of the appeal property. All the evidence suggests that the actual rent on the appeal property is not a good indicator of value and cast doubts as to the reliance that can be placed on the actual rent.

31. It is for the appellant to prove their case. After considering the whole basket of rents for Old Brompton Road, the majority bar one reflected an analysed rent above the £900/m^2. The appellant has not established to my satisfaction that a rate lower than £900m^2 should be adopted.

32. Accordingly, the appeal has been dismissed.

Date: 14 December 2020

Appeal number: CHG100113699