VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeal; Lotus and Delta v Culverwell (VO) [1976] RA 141; *Shop and premises; Zone A rate; appeal allowed in part.*

RE: 135 Whiteladies Road, Bristol, BS8 2PL

APPEAL NUMBER: CHG100115773

BETWEEN:	Gloden Limited	Appellant
	and	
	Mr D Virk (Valuation Officer)	Respondent

BEFORE: Mrs M Dowrick (Senior Member)
Ms S Eze

CLERK: Mr R Gath

REMOTE HEARING 3 on 15 January 2021

APPEARANCES: Mr D Johnstone from Colliers (Appellant's representative)
Mrs S Farthing (Valuation Officer's representative)

Summary of Decision

1. Appeal allowed in part. The entry is reduced to Rateable Value £15,750 with effect from 1 April 2017.

Introduction

2. This appeal has been brought in respect of the following: 135 Whiteladies Road, Bristol, BS8 2PL (the 'appeal property'), which was entered in the 2017 rating list as 'Shop and premises' at rateable value £18,500 effective from 1 April 2017 with a Zone A rate of £470/m^2. Mr Johnstone was seeking a rateable value of £14,500 with a Zone A rate of £370/m^2.

3. The appeal property was located with five other similar units, four of them being shops and one of them a restaurant, located close to the Clifton Down Shopping Centre and railway station, in the Clifton area of Bristol which is a vibrant retail area.

It had an area of 64.02m^2, 40.62m^2 in Terms of Zone A (ITZA). Some of the appeal property was masked, hence the valuation showing two zoning rates, with a 5% reduction for the masked areas. It was held on a 10 year lease effective from 17 July 2016 at a yearly rent of £16,000. The lease allows for a five year break clause and a five yearly rent review.

4. 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.

5. 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.

6. In accordance with Regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, Mr Johnstone made an appeal to this Tribunal because he disagreed with the current rateable value. The appeal to this Tribunal has been made on the grounds that the valuation for the appeal property is not reasonable[1].

7. This is a compiled list appeal so the material day is 1 April 2017. The appeal to this Tribunal was made on 30 October 2020 following the Valuation Officer's Decision Notice of 8 July 2020 in respect of the appeal property (hereditament).

8. There was a preliminary issue in that the Valuation Office Agency (VOA) wanted to include additional evidence. The evidence was location plans of the VOA's comparable properties, and a floor plan and photograph's of the appeal property.

9. Mr Johnstone did not object to the inclusion of this evidence as it was not new evidence but, expanding on information already exchanged between the parties. Furthermore, plans and photographs are permitted to be produced at the hearing.

10. In view of the lack of objections from Mr Johnstone, the panel allowed the additional evidence.

11. As Mr Johnstone appeared on behalf of the appellant as both advocate and expert witness, the clerk asked if there was a success related fee involved and if so whether its existence was compatible with his obligations to the tribunal as an expert. This question was raised in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC).

12. Mr Johnstone declared that he was not instructed under any conditional fee arrangement, but a fixed fee. Mr Johnstone confirmed that he understood and accepted that his duty was to the Tribunal in giving his evidence and he would

[1] Regulation 13A(2) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009.

comply with this, as well as the requirements of his professional body regardless of whether or not the evidence supported the client's case.

13. The panel accepted this expert witness evidence on the above basis as the appeal is 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 (regulation 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial).

14. The absence in this decision of a reference to any statement or item of evidence placed before me by the parties should not be construed as it being overlooked.

Issues

15. The issue for determination is the rateable value of the appeal property.

Evidence and submissions

16. Mr Johnstone had provided the Tribunal with both parties' submissions. The evidence included the following: his statement of case, photographs of the appeal property and the surrounding hereditaments, rental summaries for his comparable properties, the proposed valuation, a copy of the challenge proposal, the Valuation Office Agency's challenge decision notice and copies of correspondence that had passed between the parties.

17. He argued that the rental evidence for the appeal property was not reliable as it was one year away from the AVD. However, he had taken the rental evidence from other properties within the locality and calculated what the rent was likely to be, had the lease commenced on 1 April 2015. This supported his argument that the rateable value was too high and asked the panel to allow the appeal.

18. Mrs Farthing was representing the Valuation Officer as advocate and expert witness.

19. She contended that the tone within the locality supported the current zone A rate and she asked the panel to dismiss the appeal.

Decision and reasons

20. The task for the panel was to determine the rateable value for the appeal property, which represented a rent that a hypothetical landlord and tenant would agree, as at the antecedent valuation date (AVD),1 April 2015. The common date was used to ensure that every property was treated in a consistent way; otherwise similar properties would have different rateable values if numerous dates were used, as rental values fluctuated over time.

21. There was another important date for rating appeals and that was known as the 'material day.' This was the date on which the physical factors had to be taken into account. In this appeal, the material day was 1 April 2017.

22. The term 'rateable value' is defined in 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; and

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".

19. The Lands Tribunal judgment in *Lotus and Delta v Culverwell (VO)* [1976] RA 141 provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property was considered to be the correct starting point but, where available, rents on similar properties were also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.

20. Mr Johnston argued that the rent for the appeal property was unreliable as the tenancy commenced just over a year after the AVD. The rent for the neighbouring property, number 137 was a new rent from 25 June 2018 at £14,500 per year which analysed at a zone A rate of £445/m^2. He looked at the rents for the other properties in the same row, however, number 139 he dismissed as the rent was not reliable being it included an office above the shop and required heavy adjustment Number 131 was a rent between connected parties. The other property was a restaurant as was therefore not a like for like comparison.

21. He argued that the rents for numbers 135 and 137 suggested that the rental market had increased by 10% over two years or .45% per month since 1 April 2015. Working this back, Mr Johnstone calculated that the zone A rate for the appeal property should be £370/m^2.

22. He also argued that Mrs Farthing's comparable properties were not 'like for like' for the following reasons:

a) Units 11 and 18 Clifton Down were located in an indoor shopping centre which also had a car park;
b) 92A Whiteladies Road was a clinic and was not zoned;
c) 90 Whiteladies Close was rented but the tenant ended the tenancy as they could not afford the rent. He therefore deemed it to be not a reliable rent:

d) 121 Whiteladies Road was a lease renewal and not a new tenant coming fresh to the scene; and
e) 100 and 102 Whiteladies Road were a mile from the appeal property.

23. He also explained that there was no natural footfall to this particular row of shops as it was on the opposite side of the road to the shopping centre and it had roads at either end of this row of five hereditaments. After the road, there was a church and residential properties.

24. Mrs Farthing contended that the zone A rate was correct and provided the following comparable properties in support of this.

Property	Area	Adjusted Rent	Zone A rate	Rateable value
90 Whiteladies Road	$99m^2$	£25,237	$450/m^2$	£23,750
92A Whiteladies Road	$159m^2$	£26,410	$450/m^2$	£25,500
Unit 18, Clifton Down Shopping Centre	$53m^2$	£25,000	$450/m^2$	£20,500
100 Whiteladies Road	$73m^2$	£20,868	$450/m^2$	£20,750
Ground Floor, 102 Whiteladies Road	$116m^2$	£30,780	$450/m^2$	£26,250
Unit 11, Clifton Down Shopping Centre	$103m^2$	£30,000	$450/m^2$	£25,750
121 Whiteladies Road	$91m^2$	£21,252	$470/m^2$	£17,500

25. Given the above rental analysis, Mrs Farthing contended that it supported the zone A rate of £470/m^2 for the appeal property.

26. She had also produced a location map of the zone A rates and had colour coded them as follows to represent the zone A rates:

a) green area - located on the same side of Whiteladies Road, left of the appeal property. Zone A rate of £500/m^2;
b) purple area - located on the same side of Whiteladies Road, right of the appeal property within the residential area. Zone A rates of £390/m^2
c) purple hatched area - located on the same side of Whiteladies Road to the right of the appeal property, further away to the appeal property than the purple area. Zone A rates of £445/m^2;
d) yellow area – opposite the appeal property. Includes the shopping centre. Zone A rate of £450/m^2; and
e) red area – the row of shops where the appeal property was located. Zone A rate of £470/m^2.

27. Mrs Farthing contended that those properties in the green zone had a higher footfall than those in the yellow zone which was the reason for the zone A rate of £500/m^2; those in the purple and purple hatched zones had lower zone A rates to reflect these being in a mainly residential area. The appeal property fell in between the green and purple zones. She defended the rate of £470/m^2 for the red zone as it allowed for the reduced footfall and the other disadvantages that Mr Johnstone had highlighted such as the row being on its own, located between two roads and towards the residential area.

28. In effect, both parties accepted that there was less footfall to the appeal property.

However, given that the lowest zone a rate in the locality was £390/m^2 the panel concluded that Mr Johnstone's proposed rate of £370/m^2 was too low.

29. To help establish what the zone A rate of the appeal property should be, the panel then considered the tonal evidence provided by Mrs Farthing. It agreed with Mr Johnstone that Mrs Farthing's comparable properties were not comparable for the reasons argued by him. It therefore applied little weight to the majority of them, although it did find that the evidence for 100 and 102 Whiteladies Road useful as these were located in a residential location.

30. Given the lack of substantial tonal evidence for 'like for like' comparable properties, the panel concluded that the rateable value should be calculated by reference to the rent for the appeal property. It applied little weight to Mr Johnstone's argument that the rent for the appeal property was too far from the AVD. It also applied little weight to his adjustment of the rent back to 2015 as this assumed a constant rate of growth. No substantial evidence was produced to support this and the panel was also mindful that rental values may not follow a constant growth rate. Whilst rental evidence at the AVD is a starting point, the panel concluded that rental evidence around a year from the AVD is acceptable to determine the rateable value, in the absence of any substantial alternative evidence.

31. The 2016 rent analysed to a zone a rate of approximately £401/m^2, and the panel therefore determined that this should be the zone A rate, allowing the appeal in part.

32. This zone A rate was similar to the purple zone rate of £390/m^2, which reflected the appeal property being located close to the residential area,. However, it was also closer to the main shopping area than the purple zone which would indicate a higher value but also reflected the reduced footfall that both parties had accepted.

33. The revised valuation is as follows:

Description	Area	Rate/£	Value
Retail zone A	22.81	401.00	9,146.81
Retail zone A	.83	380.95	316.19
Retail zone B	20.35	200.50	4,080.18
Retail zone B	7.26	190.48	1,382.89
Retail zone C	6.02	100.25	603.51
Retail zone C	3.22	95.24	306.67
Kitchen	3.57	40.10	143.16
		Sub total	15,979.41
		Rateable value say	15,750.00

Order

34. Under the provisions of regulation 38(4) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to reduce the entry in the rating list to rateable value £15,750 with effect from 1 April 2017.

35. Under regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

Refund of appeal fees

36. As the ground of the appeal has been made out, 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: 12 February 2021

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