THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; Challenge against Compiled List entry; Shop and Premises; accuracy of rateable value; rental and comparable evidence considered; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; Appeal allowed in part.

RE: 342 Regents Park Road, London N3 2LL

APPEAL NUMBER: CHG100116205

BETWEEN:	Brooks Green (Represented by Altus Group)	Appellant
	and	
	Mr A Corkish (Valuation Officer)	Respondent

BEFORE: Mrs J Ellis (Senior Member)
Mrs C Dodsley

CLERK: Ms R Muller

REMOTE HEARING ON: Tuesday 12 January 2021

APPEARANCES: Mr C Strong, Representative of the Appellant
Mr P Emerick, Representative of the Appellant
Mr R Das, Representative of the Respondent

Summary of decision

1. Appeal allowed in part. The Rateable Value (RV) of the subject hereditament was determined at £29,000 with effect from 1 April 20017.

Introduction

2. This was a 2017 compiled Rating List appeal. The assessment of the subject hereditament was originally £35,500 RV, with effect from 1 April 2017 and described as shop and premises. For this appeal, matters that affect the physical state or enjoyment of the hereditament or the locality were to be taken as at the material day, which was 1 April 2017.

3. A check had been completed and on 8 April 2019, a reduction to the RV of the subject hereditament from £35,500 RV to £33,000 RV was made by the Valuation Officer, with effect from 1 April 2017. A challenge was submitted on 5 August 2019 and was completed on 19 May 2020. An appeal was received by the Tribunal on 25 September 2020, made on the grounds that the valuation for the hereditament was not reasonable.

4. Mr Strong appeared on behalf of the Appellant as expert witness and Mr Emerick appeared on behalf of the appellant as Advocate. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Strong stated that he was instructed on a contingency fee basis. He declared 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 the client's case.

5. 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 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). The panel therefore considered the expert evidence and attached such weight to it as it saw fit.

6. The subject hereditament was an end of terrace corner retail unit trading as an Accountant and was owner occupied. It consisted of basement, ground, first and second floors, situated in Finchley, close to the Finchley Underground Station. The area of the subject hereditament was agreed by the parties to be 55.57m² (ITZA).

7. 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.

8. 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.

9. This document is not intended as a verbatim report of the proceedings nor is it proposed to reproduce in full all of the parties' evidence. The absence in this decision of a reference to any statement or item of evidence placed before it by the parties should not be construed as an indication that that statement or item of evidence has been overlooked by the panel.

Issue

10. The issue between the parties concerned the RV of the subject hereditament and specifically, the Zone A price that should apply.

Evidence and submissions

11. The appellant's representatives submitted a bundle of evidence which included details of the subject hereditament, the issues in dispute and details of comparable properties.

12. Within the Challenge submission, the appellant's representatives had sought a reduction to £18,500 RV, which had been based on an unadjusted Zone A rate of £315/m². However, after an inspection, which had taken place by both parties on 11 January 2021, the appellant's representatives had stated that the RV sought for the subject hereditament had been revised to £26,000 RV with effect from 1 April 2017, which had been based on an unadjusted Zone A rate of £450/m².

13. Mr Das, the representative for the Valuation Officer (VO) did not object to the revised assessment submitted at the hearing by the appellant's representatives. Therefore, the panel allowed the revised Zone A rate of £450/m² for the subject hereditament to be included within the discussions.

14. The VO submitted a bundle of evidence, which included details of comparable hereditaments within the local area and a summary of his conclusion in support of his decision.

15. As such, the VO sought to defend the existing assessment of £33,000 RV, which was based on the existing unadjusted Zone A rate of £575/m² and requested that the appeal be dismissed.

16. For consideration, extracts from several Case Law were submitted, including Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141.

Decision and reasons

17. The subject hereditament must be valued for the purpose of non-domestic rating on the basis of the rent at which it might reasonably be expected to let from year to year on a number of assumptions (see paragraph 2(1) of Schedule 6 of the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015 (antecedent valuation date or AVD). Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 (material day) for this appeal. When assessing the RV of any property, rating law also requires that the property must be assumed to be 'vacant and to let', and in the state set out in Schedule 6 of paragraph 2(7) of the Act, in relation to both the physical nature of the property and its mode or category of use.

18. In line with the decision in *Lotus and Delta v Culverwell,* the panel was aware that usually the rent on the subject hereditament should be taken as a starting point, but as the subject hereditament was owner occupied, there was no rent to consider. Therefore, the rent of comparable hereditaments in the locality was considered. All comparable hereditaments provided by both parties were in the same Valuation Scheme (335091).

19. The Appellant's representatives referred the panel to the comparable hereditament of 83 Ballards Lane, London, which was larger in size at 72.52m² ITZA to the subject hereditament with a Zone A rate of £314.40/m². The panel noted that it had a ten-year lease with a three months' rent-free period and a five yearly rent review. The lease commenced on 23 November 2014 at £24,000 per annum, which was circa five months prior to the AVD of 1 April 2015. As the rent had been set circa five months prior to the AVD of 1 April 2015 this looked to be a good

comparable. However, as it was a much larger property, it could not be considered a true comparable. No indication as to whether quantum applied to this larger property had been provided by the parties and therefore whilst of some assistance the rent was taken with a degree of caution and little weight was attached to it.

20. The panel also referred to the comparable hereditament of 348 & R/O 350 Regents Park Road, London, which was similar in size at 60m² ITZA to the subject hereditament with a Zone A rate of £431.67/m². The panel noted that it had a nine-year, 11 months' lease with a five yearly rent review. The lease commenced on 23 March 2014 at £24,500 per annum, which was circa 12 months prior to the AVD of 1 April 2015. However, the panel was aware that this lease was not a new lease but set at a rent review. As such, it could not be considered to be an open market rent and little weight was applied to this evidence.

21. The appellant's representatives referred the panel to the neighbouring comparable hereditament of 344 Regents Park Road, London N3 2LL, which shared an adjoining wall to the subject hereditament and was exactly the same size as the subject hereditament. This property had a new letting with a start date of 29 August 2016 for a period of 10 years, with a review period of five year. The panel noted that the lease was set 18 months after the AVD of 1 April 2015 at a rent of £24,000 per annum. Even though the lease stated that there was an eight months' rent - free period, the appellant's representatives deducted that the rent had been analysed at £505.96m². Although this comparable hereditament was not a corner property, the panel noted that this was the best comparable property to refer to, with it being next door and a duplicate of the subject hereditament with regards to size.

22. Mr Das had provided details of two comparable hereditaments in Regents Park Road to support the existing Zone A rate for the subject hereditament, where both had achieved a rent several months prior to the AVD of 1 April 2015. The first comparable hereditament was 355 Regents Park Road which had let on 5 December 2014 at £28,000 per annum. This hereditament had an area of 43.83m² ITZA. And the rent had been analysed at £547.64/m². The Zone A rate that had been adopted for this hereditament was £600/m².

23. The second comparable hereditament was 371 Regents Park Road which had let on 15 November 2014 at £25,000 per annum. This hereditament had an area of 42.27m² ITZA and the rent had been analysed at £603.50/m². The Zone A rate that had been adopted for this hereditament was also £600/m². The panel noted that both the comparable properties 355 and 371 Regents Park Road, rents had been achieved close to the AVD of 1 April 2015, however, it also noted that the Zone A rates that had been adopted were out of tone when considering the rent achieved for 344 Regents Park Road and therefore, attached little weight to them.

24. The VO had also provided details of a comparable hereditament of 6 Ballards Lane, London, which had let on 13 December 2013 at a rent of £40,000 per annum. This hereditament had an area of 60.11m² ITZA and the rent had been analysed at £632.16/m². The panel noted that this property was also a corner unit and circa equal distance from the underground station to the subject hereditament, however, in the opposite direction. The Zone A rate had originally been £575/m², but due to a successful challenge on 21-23 Ballards Lane, all the properties on Ballards Lane had all been reduced in value to £500/m² and therefore, the tone of the area had been altered.

25. The panel held that the neighbouring property of 344 Regents Park Road, London held the most weight, as even though the rent was set 18 months after the AVD of 1 April 2015, the VO could not state whether the rent was within a rising market. The panel held that the Zone a rate of £575/m² on Regents Park Road was out of tone due to rent of 344 Regents Park Road, London.

It was noted that a change in the tone of a street or area could take place if it was shown that the rent of a hereditament supported the change, of which the panel referred to the change of the tone on Ballards Lane.

26. Considering all the evidence provided before it, the panel considered that the rental evidence of 344 Regent Park Road, London supported a lower rate to be adopted. However, the panel had not been persuaded to use the Zone A rate adopted by the appellant's representatives of £450/m², but had been persuaded that an unadjusted Zone A rate of £505/m² was more in line with the comparable evidence provided. The panel used the relativities provided by both parties, which produced a revised assessment of the subject hereditament of £29,000 RV, as shown:

Line	Floor	Description	Area (m²)	Relativity	£/m²	Value (£)
1	Ground	Retail Zone A	35.39	1.050	477.23	16,889
2	Ground	Retail Zone B	27.49	0.500	227.25	6,247
3	Ground	Office	21.86	0.125	56.81	1,242
4	Ground	Staff Toilets				
5	First	Office	24.56	0.0625	28.41	698
6	First	Office	15.46	0.0625	28.41	439
7	First	Office	13.32	0.0625	28.41	378
8	First	Office	21.25	0.0625	28.41	604
9	Second	Office	25.00	0.040	18.18	455
10	Second	Office	17.13	0.040	18.18	311
11	Basement	Internal Storage	31.25	0.050	22.73	710
12	Basement	Internal Storage	5.71	0.050	22.73	130
13	First	Staff Toilets				
Total Area			238.42			
Subtotal						28,103
	Additional Items					
Air conditioning System			33.00		7.00	231.00
Car Parking			2		450	900
Total Value						29,234
Say:						29,000

27. Therefore, the panel allowed the appeal in part and determined the assessment of £29,000 RV with effect 1 April 2017.

Order

28. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry to £29,000 with effect from 1 April 2017 within two weeks of the date of this order.

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: 9 February 2021

Appeal number: CHG100116205