THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeals; Lotus and Delta v Culverwell (VO) [1976] RA 141; *shop and premises; zone A rate; appeals dismissed.*

RE: Claires Accessories, 15 West Walk, Yate BS37 4AX;
House of Luxxe ltd, 8 West Walk, Yate BS37 4AX; and
The Works, 10 – 12 West Walk, Yate BS37 4AX

APPEAL NUMBERS: CHG100121106, CHG100153080 and CHG100147933

BETWEEN: Claires Accessories UK Ltd, House of Luxxe, The Works — Appellants

and — Respondent

Mr D Virk
(Valuation Officer)

BEFORE: Mr P Hickson (Presiding Senior Member)
Mr S Kandola (Senior Member)

CLERK: Mr R Gath IRRV Hons

REMOTE HEARING 1 on 13 September 2021

APPEARANCES: Mr D Bullimore from Lambert Smith Hampton (Appellant's representative)
Mr R Albert (Valuation Officer's representative)

Summary of Decision

1. Appeals dismissed. The panel made no change to the rateable values (RVs).

Introduction

2. Mr Bullimore was representing all three appellants and the appeal properties were in the same location, the arguments were the same and he was seeking the same zone A rate, both him and the VO were in agreement to hear the appeals together.

3. The appeal properties were entered in the 2017 rating list as ‘Shop and premises’ at rateable value £28,000 for 8 West Walk based on a Zone A rate of £625/m^2, rateable value £32,250 for 15 West Walk based on a Zone A rate of £600/m^2 and £63,000 for 10 – 12 West Walk, based on a Zone A rate of £600/m^2. The appellant was seeking rateable values of £10,000 for 8 and 15 West Walk and £21,500 for 10 – 12 West Walk, based on an unadjusted Zone A rate of £195/m^2 for all three properties.

4. The appeal properties were located in an established shopping centre with nearly 100 retailers. It has a central core where all four walkways meet. East Walk is the busiest as it has a superstore and the majority of the parking was at the end of it. There was a Wetherspoons at the end of South Walk. West Walk has the only public toilets in the shopping centre which leads to the leisure centre and the NHS walk-in centre.

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 position.

7. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, Mr Bullimore made these appeals to this Tribunal because he disagreed with the current RVs. The appeals to this Tribunal had been made on the grounds that the valuation for the appeal properties was not reasonable[1].

8. These are compiled list appeals, so the material day is 1 April 2017. The appeals to this Tribunal were made on 18 May 2021, 7 April 2021 and 19 May 2021 following the Valuation Officer’s Decision Notices of 20 January 2021, in respect of all three of the appeal properties (hereditaments).

9. Mr Bullimore had declared that his firm is on a contingency fee basis. In view of the Upper Tribunal’s judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Bullimore’s declaration of truth included a statement that he understood and accepted that his duty is to the Tribunal in giving his evidence and he will comply with this as well as the requirements of his professional body regardless of whether or not the evidence supports his client’s case.

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

10. 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).

11. There was a preliminary issue in that Mr Albert wanted to introduce new evidence, which had not been available at the time of the VO's decision notice. It consisted of a list of settled assessments in the shopping centre. Although Mr Bullimore did not feel that these assessments were comparable to the appeal properties, he did not object to the inclusion of this new evidence.

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

Issues

13. The issue for determination was the rateable value of the appeal properties.

Evidence and submissions

14. The appellant had provided the Tribunal with both parties' written submissions. The evidence included the following: the appellant's statement of case, a map of the locality, a plan of the building, photographs of the appeal property, and details of his comparable properties, the proposed valuation, a copy of the challenge proposal, the Valuation Office Agency's (VOA) challenge decision notice, copies of correspondence that had passed between the parties and extracts of a number of judgments including *Lotus and Delta v Culverwell (VO)* [1976] RA 141 and *K Shoe Shops v Hardy (VO) and Westminster City Council* [1983] RA26 CA.

15. Claires Accessories, 15 West Walk, was held on two year leases of £10,000 per year commencing May 2015. It was previously held on a long term lease, but it invoked a break clause and then negotiated shorter leases. Mr Bullimore argued that this rent analysed to a Zone A rate of £195/m^2. Furthermore, there was a market stall selling fruit and vegetables that was located outside of the appeal property which Mr Bullimore argued effected the location of the appeal property.

16. House of Luxxe ltd, 8 West Walk, was held on a five year lease of £18,000 commencing October 2019. Mr Bullimore had analysed this to a Zone A rate of £380/m^2, however, he was seeking a Zone A rate of £195/m^2, based on the rent for 15 West Walk as he accepted that the rent for this property was too far from the AVD to be reliable.

17. The Works, 10 – 12 West Walk, was held on a ten year lease of £75,000 commencing October 2008. There was a five year rent review but the landlords had agreed not to increase the rent. Mr Bullimore was seeking a Zone A rate of £195/m^2, based on the rent for 15 West Walk as the lease for

the Works commenced in 2008, and being a ten year lease, the rent was too far from the AVD to be reliable.

18. Given his analysis of the rent for 15 West Walk, he contended that the rateable value was too high and asked the panel to allow the appeals.

19. Mr Albert was representing the VO as advocate and expert witness. He contended that the rent for 15 West Walk was not reliable. Initially it was a ten year lease from May 2009 at a rent of £50,000 per year with five yearly rent reviews. That rent analysed at £963/m^2. However, the VO argued that the appellant exercised their break clause and negotiated a new agreement on a lower rent which was based on affordability/viability and was therefore not reliable.

20. He also contended that the lease for House of Luxxe and The Works were too far from the AVD to be reliable, furthermore, The Works was held on a ten year lease.

21. However, Mr Albert argued that the basket of rents supported the current rateable values for the appeal properties and provided the following comparable properties:

Property	Total Area	Zone A rate	Rateable value
2 West Walk	145.10m^2	£625/m^2	£30,250
2B West Walk	27.29m^2	£625/m^2	£17,000
32-34 West Walk	106.75m^2	£300/m^2	£23,000
21 North Walk	216.10m^2	£525/m^2	£33,750
31 North Walk	94.49m^2	£510/m^2	£22,250
1 South Walk	240.70m^2	£700/m^2	£69,500
7 - 9 South Walk	746.61m^2	£650/m^2	£110,000
8 South Walk	103.90m^2	£575/m^2	£37,000
19 East Walk	94.09m^2	£775/m^2	£43,750
Shop Unit 1, Tesco Extra Store, East Walk	163.94m^2	£725/m^2	£78,000

22. Given this tonal evidence, this supported the Zone A rates of £600/m^2 and £625/m^2 and therefore, the current rateable values.

23. Mr Albert also explained that in 2013/2014, one year before the AVD, there was an 8% increase in footfall and it had lower than average vacancy rates. That suggested there was demand for the units in the shopping centre. Furthermore, the VO had Retail Surveyors Association type discussions with agents representing the landlord and tenants and had agreed the following tones:

a) East Walk had the highest values of between £900/m^2 to £850/m^2;
b) West Walk had values of between £900/m^2 to £625/m^2;
c) South Walk had values of between £900/m^2 to £650/m^2; and
d) North Walk had values of between £900/m^2 to £500/m^2.

24. As the appeal properties were located in West Walk, the unadjusted rates for the appeal properties of £625/m^2 and £600/m^2 were at the lower end of the

range of the tone. As this supported the current assessments, Mr Albert asked the panel to dismiss the appeals.

Decision and reasons

25. 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) of 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.

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

27. 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;
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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; and
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> 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".

28. The panel firstly considered the rent of the appeal properties, this being the starting point in the weighting of evidence as stated in the judgment of *Lotus and Delta v Culverwell.*

29. Both Mr Bullimore and Mr Albert suggested that little weight was applied to the rents for The Works as it was on a ten year lease commencing 30 October 2008 and the lease for House of Luxxe commenced on October 2019.

30. The panel also applied little weight to the rent for Claires Accessories as it had been situated in West Walk since 1999 which did not fulfil the rating hypothesis as a new tenant coming fresh to the scene and the rent was not reliable as it was based on turnover.

31. As it applied little weight to the rents for the appeal properties, the panel then turned to the other comparable properties, in particular the tone of the list. The definition of tone was provided by the Court of Appeal in *K Shoe Shops v Hardy (VO) and Westminster City Council*. In this case, the Court of Appeal held that when seeking to rely on evidence of tone, there were three stages of evolution. Firstly, a new list would carry little persuasive weight that a tone of values existed; little of its basis would have been tested. The second stage would have regard to settlement evidence and decisions of tribunals. Finally, a stage is reached when there are sufficient numbers of settlements, or lack of challenges against assessments to establish a pattern of reliable values. At that moment, the tone can be said to exist and it could be used as persuasive evidence in its own right.

32. That ratio was further considered in *Futures (London) Ltd v Stratford (VO)* [2006] RA 75 where at paragraph 25, the Lands Tribunal member referred to the stages leading to the establishment of a 'tone of the list':

> "At first when a new rating list is put on deposit assessments will carry relatively little weight: they are opinions of value by the valuation officer as yet unchallenged and agreed or determined by a Valuation Tribunal or this Tribunal or accepted by lack of challenge. Finally, a stage will be reached when enough assessments have been agreed or determined or are unchallenged to establish a pattern of values, a tone of the list. The list is then said to have settled rents will be subsumed in to assessments. At this stage rating surveyors will have little regard to rents and pay considerable attention to assessments. The position at any time regarding tone of the list is a question of fact."

33. As the VO had concluded the RSA type discussions with the tenants' agents and the landlord, which had resulted in a number of settlements and agreements, the panel was satisfied that a tone of value for West Walk had been established with values of between £900/m^2 to £625/m^2.

34. As the unadjusted Zone A rates of £625/m^2 and £600/m^2 were at the lower end of the tone of value, this supported Mr Albert's contention that the unadjusted Zone A rate was correct.

35. Given the above, the panel concluded that the RVs of the appeal properties did not seem excessive and the panel dismissed the appeals.

Date: 28 September 2021

Appeal numbers: CHG100121106, CHG100153080 and CHG100147933