THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 list appeal; shop and premises; comparable properties; subject rent; appeal allowed in part.

Re: 13-13, Fleet Street, Swindon SN1 1RQ

APPEAL NUMBER: CHG100122979

BETWEEN:	Peera Investments Ltd	Appellant
	and	
	Mr D Virk (Valuation Officer)	Respondent

PANEL: Mr S Wood (Chairman)

Ms S Yousef

CLERK: Mrs K Clewer

REMOTE HEARING No. 3 on 16 August 2021

APPEARANCES:

Mr I Landau of Keningtons Chartered Surveyors on behalf of the appellant as both advocate and expert witness
Mr S Lewis on behalf of the respondent Valuation Officer as both advocate and expert witness

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Summary of decision

1. Appeal Allowed in Part; The appeal property's assessment was reduced to £21,000 Rateable Value (RV) with effect from 1 April 2017.

Introduction

2. This appeal has been brought in respect of the following: 13-13, Fleet Street,Swindon SN1 1RQ, which had been entered in the 2017 Rating List as shop and premises at £35,000 RV, effective from 1 April 2017.

3. The appellant's Challenge to the Valuation Officer (VO) was made on 5 September 2019. An appeal to this Tribunal was made, following the VO's Decision Notice of 11 December 2020.

4. The appeal property was a modern retail unit constructed in 2012. It was located within the city centre shopping area of Swindon on Fleet Street a pedestrianised road. The property had a return frontage onto Fleet Square. The valuation of £35,000 RV was based on an unadjusted zone A price of £350 per m^2.

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. As Mr Landau 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).

8. Mr Landau declared that he was not instructed under any conditional fee arrangement. He 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 the evidence supported the client's case.

9. 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 the panel before coming to its decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

Issue

10. The issue in dispute was whether the current zone A price of £350 per m^2 and the resulting RV of £35,000 was correct.

Evidence and submissions

11. The evidence bundle provided to the panel comprised all the submissions exchanged between the parties as part of the challenge process.

12. Mr Landau gave an overview of the reasons for the appeal. He submitted that the rent of the subject property subject property in 2012 as a new letting for £20,000 per annum supported a reduction to the zone A price. Whilst this was some time before the AVD at the rent renewal in 2017 the rent was increased to £21,700 (as confirmed by the landlord) but this was due to some additional storage space being taken at the rear of the property. Mr Landau argued at the challenge stage that the subject rent along with rents on comparable properties and the tone of value in Fleet Street supported a zone A price of £165 per m2 for the subject property. However, at the hearing Mr Landau informed the panel that having reviewed the evidence of comparable properties and the zone A prices adopted in Fleet Street a value of £205 per m^2 appeared to be more appropriate. He also conceded that a 5% uplift for the return frontage should be applied to the zone A price and the zone B area measuring $24.47m^2$.

13. Having regard to his evidence, Mr Landau sought a revised assessment of £23,500 RV for the appeal property, based on a zone A value of £205.

14. Mr Lewis argued that the appeal property's assessment was fair and reasonable. He referred to an extra £12,000 having been paid when the rent had been agreed in 2012 as a premium which must be added to the rent making it £32,000. He therefore analysed the rent to £319.30 per m^2 which he stated supported the adopted rate of £350 zone A. He stated that as the actual date of the lease renewal was unknown but assumed to be January 2017, the original rent had included a large capital sum and the rent was nearly two years post AVD little weight should be attached to it.

15. Mr Lewis provided rental details of three comparable properties in Bridge Street which he stated also supported the current zone A price of £350 per m^2. He therefore sought dismissal of the appeal

Preliminary matters

16. Mr Lewis stated that the areas of the subject property had been agreed by the appellant's representative at the check stage in accordance with regulation 4c of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (SI 2009/2268) as amended. At the challenge stage Mr Landau had proposed new measurements and the panel should have regard to the original measurements of the subject property as agreed under regulation 4c. Further to this Mr Lewis referred to an area of outside seating ascribed to the property which had not been included within the valuation and for which no details had been provided

17. Mr Landau explained that there had been a previous check at which time the revised measurement to include the extra storage space had been provided to the VO. However, this check had run out of time and a second check had been submitted. Mr Landau believed that the VO had failed to amend the areas but in haste to progress to the challenge stage he had assumed that they were now correct. It was clear from his challenge submission what his proposed areas were and included the extra space not contained within the VO's assessment record and some amendments to the original areas.

18. The panel was aware that all factual matters must be agreed under regulations 4c to 4f of SI 2009/2268. However, it was prepared to accept the revised areas proposed by Mr Landau as he had been open and transparent about the extra storage area and had raised the matter of the differing areas at the first check.

19. In respect of the outdoor seating area the panel attached weight to the statement of the landlord which stated that this area went live sometime in the Autumn of 2017. As this appeal concerned a challenge to the compiled list entry, in accordance with Non-Domestic Rating (Material Day for List Alterations) Regulations 1992, the material day is 1 April 2017, thus meaning this is the date the panel had regard to physical facts relating to the appeal property and its locality.

20. The panel considered that as the seating was not part of the appeal property at the material day of 1 April 2017 it had no relevance to the rateable value under consideration at the hearing. Once correct details in respect of this area had been obtained it would be up to the VO to issue a notice of alteration to include any value attributed to the seating area.

Decision and reasons

21. The issue in dispute concerned the level of value to be adopted for the subject property. The term 'rateable value' is defined in paragraph 2(1), 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;

    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".

22. The antecedent valuation date (AVD) for 2017 list rating appeals is 1 April 2015.

23. The panel had regard to the Lands Tribunal judgment of *Lotus & Delta v Culverwell and Leicester City Council (*LVC/376/1975). This case had established six propositions, which gave clear guidance to be followed when assessing rateable value, namely:

    '(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 is 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 value of the appeal hereditament, the weight to be attributed to the differing 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.

(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.'

24. Bearing these six propositions in mind, the panel acknowledged that the correct starting point in this appeal was the actual rent passing on the appeal property. The rent of £20,000 was an open market letting effective January 2012 with a three month rent free period. The panel attached little weight to the VO's argument that the £12,000 extra paid was a premium and should be treated as a capital contribution. It was clear from the landlord's statement that this had been a rent guarantee payment. In any event it was usual for any premium to be spread over the terms of the lease or until the first rent review date and not simply added to the rent. If the £12,000 had been paid as a premium it would not have been paid each year making the rent £32,000 per annum but would have increased the rent by £2,400 per annum to the first review.

25. The panel considered that the rent in 2012 being approximately three years prior to the AVD was not conclusive but also considered the rent agreed in 2017 with only an increase for the storage area taken at that time. The panel was of the opinion that these rents provided a useful starting point. The rents indicated that the price adopted of £350 per m^2 seemed excessive.

26. The panel went on to consider the rents of the comparable properties provided by the parties.

27. 27-29 Bridge Street had been rented with effect from 29 September 2014 at £80,000 per annum. It had a total area in terms of metres squared (ITMS) of 244.57. Mr Lewis had analysed this rent to £349.55 per m^2.

28. 26 Bridge Street had been rented with effect from 1 May 2014 for £20,000 per annum. It had a total area ITMS of 62.67. Mr Lewis had analysed this rent to £340.25 per m^2.

29. 2A Havelock Square had been rented with effect from 19 May 2014 at £10,000 per annum. It had a total area ITMS of 24.61. Mr Lewis had analysed this rent to £375 per m^2.

30. Having regard to the locality of the VO's comparable properties to the appeal property the panel attached weight to the plan provided by Mr Landau showing the price per m^2 adopted for properties in Fleet Street compared to Bridge Street properties. It was apparent that the Bridge Street properties were valued at a rate of £350 per m^2 and those on Fleet Street at £165 per m^2 or £205 per m^2.

31. It was therefore the panel's opinion that there was a distinct difference in value between Fleet Street and Bridge Street and therefore little weight was attached to the rents for Bridge Street.

32. It was unclear where in proximity to the appeal property 2A Havelock Square stood as this was not shown on either the goad plan or the location map provided by the parties. Mr Landau stated that this property was extremely close to the Brundell Shopping Centre and would therefore attract a higher rent. The panel could attach little weight to this comparable property as it was not in the panel's opinion within the direct locality of the appeal property.

33. Mr Landau referred to 50 Fleet Street which had been let in December 2014 at £8,000. The property measured 52.39 ITZA so was smaller than the appeal property. Mr Landau had devalued the rent of £7500 with effect from February 2018 to £143 per m^2 using the same straight line basis with no adjustments the 2014 rent would devalue to £152.70. It was valued at £165 per m^2. The panel noted that this comparable was diagonally opposite the appeal property and was therefore in close proximity to the appeal property however the panel considered the appeal property to be in a superior position within Fleet Street.

34. In conclusion, the panel found it was necessary to attach most weight to the actual rents of the appeal property. Having regard to the 2017 rent, which analysed to £219.25, in conjunction with the rental evidence provided for 50 Fleet Street and the tonal evidence for Fleet Street properties, the panel found that this supported Mr Landau's contention that the current RV was not correct.

35. In view of the foregoing, having consideration of the evidence presented, the panel found the appellant's representatives revised valuation at £205 per m^2 to be the correct level of value for the appeal property. The appeal was therefore allowed in part.

36. In calculating the RV using the zone A price of £205 per m^2 and applying a 5% uplift to the zone A and zone B area measuring 24.47m^2 the panel calculated the RV to be £21,207. It appeared that Mr Landau had made an error in the calculation at the hearing.

Ground	Area	Factor	Price psm	£
Zone A	65.08	1.050	215.25	14,008
Zone B	24.47	0.550	112.75	2759
Zone B	29.06	0.50	102.50	2979
Zone C	11.51	0.250	51.25	590
Remainder	34.00	0.125	25.63	871
Total Say				21207 21,000

Order

37. Under the provisions of regulations 38(4) and 38(7) 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 show the following:

    13-13, Fleet Street, Swindon SN1 1RQ
    Rateable Value £21,000 effective from 1 April 2017

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

39. 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: 10 September 2021

Appeal number: CHG100122979