THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal (2017 list); Local Government Finance Act 1988; Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009; Appeal allowed in part.

RE: Unit 1, Barkers Arcade, Kensington High Street, London W8 5SF

APPEAL NUMBER: CHG100127256

BETWEEN:	Robinson Webster (Holdings) Limited	Appellant
	and	
	The Valuation Officer	Respondent

PANEL: Mr M Smith (Chairman)
Mr D Greensmith

CLERK: Mr A Johnson Tech IRRV

ON: 11 August 2022

APPEARANCES: Mr S Carter from Altus Group (advocate for the Appellant)
Mr J McCarthy from Altus Group (expert witness for the Appellant)
Ms P Walsh (representing the Respondent)

REMOTE HEARING

DECISION AND STATEMENT OF REASONS

Regulations 36 and 37 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009

Summary of decision

1. This appeal was allowed in part. The panel determined that the rateable value (RV) of the subject property was £322,000 with effect from 1 April 2017.

Introduction

2. This decision notice is not intended to be an exhaustive, contemporaneous, or verbatim record of the proceedings and must not be construed in such a manner. The parties can be assured that all of the evidence presented was fully considered by the panel before coming to its decision. The absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

3. This appeal had been brought pursuant to regulation 13A of the Non-Domestic (Alterations of Lists and Appeals) (England) Regulations 2009. The appellant had challenged the Valuation Officer's (VO) decision that the appellant's proposal was not well-founded.

4. The appellant's proposal sought alteration to the 2017 non-domestic rating list on the grounds that the RV for the subject property on the compiled date of 1 April 2017 were not reasonable. The RV was £330,000.

5. Mr Carter and Mr McCarthy appeared on behalf of the appellant (as advocate and expert witness respectively). Mr McCarthy stated that he was instructed under a contingency based fee. Mindful of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT (LC), the panel accepted the expert witness evidence on the above basis as the appeal was not considered to be 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 Tribunals' rules concerning admissibility of evidence (regulation 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial).

6. It was therefore appropriate for the panel to consider the 'expert' evidence and assess what weight, if any, to give it in the context of the issue before it.

Preliminary issue

7. On 9 August 2022 Mr McCarthy submitted plans in respect of the subject property and three comparable properties he wished to reply upon which he sought to enter into evidence. Ms Walsh did not raise any objection and the panel accepted them into evidence.

Issue

8. The issue in dispute was the level of allowance which should apply to reflect the shape of the subject property. The existing rating valuation already had a 2.5% allowance and the appellant's representative proposed increasing this to 10%.

Summary of evidence and submissions

9. The subject property is a retail unit contained within a parade of other retail units which front Kensington High Street and is a short walking distance away from Kensington High Street underground station.

10. Mr McCarthy submitted that no dispute existed between the parties as far the factual matters were concerned or the adopted Zone A rate of £2,200 per m/^{2}. It was, however, Mr McCarthy's opinion that the irregular shape of the subject property, being significantly wider at the front, resulted in a large proportion of the ground floor area being in Zone A. Mr McCarthy contended that an allowance of 10% was reasonable to reflect this disability and reduce the RV to £305,000.

11. In order to support his argument, Mr McCarthy presented the panel with details of other retail premises which benefited from an allowance of more than 2.5%. These were:

Address	2017 RV	Allowance	Zone A m^2	% of Zone A	Dimensions (provided by Ms Walsh)
Unit 1, Barkers Arcade, W8 5SF (subject property)	£330,000	2.5%	106.49	48.19%	W 14.0m^2 D 21.5m^2
Bst-Grd Floors, 152-154 Walton Street, SW3 2JL	£230,000	10.8%	136.78	52.44%	W 8.0m^2 D 17.0m^2
Bst & Grd Flr, 140-146 Kings Road, SW3 4UU	£492,500	10%	21.92	38.08%	W 20.0m^2 D 12.0m^2
6F, Sloane Street, SW1X 9LE	£345,000	7.5%	78.4	63.48%	W 4.0m^2 D 14.0m^2
Bst-Gnd FL, 110-112 Kings Road, SW3 4TY	£380,000	7.5%	50.82	25.73%	W 13.2m^2 D 10.5m^2

12. Mr McCarthy stated that his best comparable was Bst-Grd Floors, 152-154 Walton Street because it was similar in size to the subject property and had a similarly proportioned Zone A.

13. Ms Walsh argued that the starting point for consideration in this appeal was the passing rent. She stated that this was a new letting of £340,000 per annum which had been agreed on 31 July 2014 and equates to £2,215 p/m^2. This, she added, was very similar to the adopted tone of £2,200 p/m^2 and supported a contention that a RV of £330,000 was reasonable. Ms Walsh also provided rental evidence of comparable properties in support of her contention. Mr McCarthy rebutted the rental evidence in respect of the appeal property by pointing out that the transaction had taken place in November 2014 and was actually a lease renewal; the leaseholder had been present since at least 1990.

14. Ms Walsh also argued that the allowances referred to by Mr McCarthy had been granted for multiple reasons and not just size/layout. Allowances had been made in respect of Bst-Grd Floors, 152-154 Walton Street to reflect structural issues and the presence of internal walls, Bst & Grd Flr 140-146 Kings Road was a triple unit, 6F Slone Street was a long and narrow property, and Bst-Gnd FL, 110-112 Kings Road had retained elements of dividing walls which adversely affected circulation.

15. Ms Walsh further argued that the allowance of 2.5% had been granted for the 2005 and 2010 rating lists, having been agreed with reputable agents and she saw no reason to increase it. This, she submitted was in line with *Barnard and Barnard v Walker (VO)* LVC/231/1975 because there was no material change in circumstances between the three rating lists. Mr McCarthy argued that reconfiguration work relating to other units on the parade (which had reduced the overall number of units in the parade) was a material change which differentiated the circumstances of the subject property in the 2017 rating list from previous lists.

Decision and reasons

16. Paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988 provides that the RV 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 based upon three assumptions. These assumptions are:

(a) that the tenancy begins on the day by reference to which the determination is to be made;
(b) 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) 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.

17. This was an appeal against an entry in the 2017 rating list and so the rental levels are to be taken as those passing at the antecedent valuation date (AVD) of 1 April 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014. The material day (the date by which physical factors must be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (as amended). The material day in respect of the subject property is 1 April 2017.

18. The panel was guided by the leading judgment in the Lands Tribunal case of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141. Whilst it was not found necessary to list them, this case set out six propositions to have regard to when weighing the evidence and expert evidence.

19. Having regard to *Lotus & Delta*, the panel considered the rental evidence in respect of the subject property as a starting point. Whilst the parties had provided different commencement dates for the lease (July 2014 and November 2014) the panel found that it was a renewal and not a new letting.

20. The panel was satisfied that the reconfiguration work referred to by Mr McCarthy represented a material change to the locality. The panel also understood that other retail units within the same arcade were more regular in shape when compared with the subject property (a point made by Mr McCarthy which was not rebutted).

21. The panel considered the allowances which had been made in respect of the comparable properties presented by Mr McCarthy. Whilst the panel found that each of these were not directly comparable due to their location and/or the reason(s) for each allowance it concluded that, after balancing the totality of the evidence, an allowance of 5% was reasonable. This produces a revised RV for the subject property of £322,000.

22. This appeal was therefore allowed in part.

Order

23. In accordance with regulations 38(4) and 38(9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the VTE orders the VO to alter the valuation list within two weeks of the date of this order to show the entry in the rating list for the subject property to £322,000 RV with effect from 1 April 2017.

Refund of appeal fee

24. The appellant is entitled to a refund of the appeal fee in accordance with regulation 13E of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009. This will be refunded as soon as possible.

Date: 25 August 2022 **Appeal Number**: CHG100127256

Right of appeal
Any party who is aggrieved by the Tribunal's decision, and who appeared or was represented at the hearing, has the right of appeal to the Upper Tribunal (Lands Chamber). Any such appeal should be made within four weeks of the date of this decision notice.