THE VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal – Compiled List appeal – rental evidence – location – end allowance for quantum appeal dismissed

Re: 28 Jubilee Way, Scunthorpe, DN15 6RB

APPEAL NUMBER: CHG100128683

BETWEEN:	British Heart Foundation	Appellant
	and	
	Mrs J Moore	Respondent
	(The Valuation Officer)	

PANEL;	Mr K Sutch – Senior Member
	Mrs C Dodsley
CLERK:	Mr A Jolly
REMOTE HEARING	Thursday 15 April 2021
APPEARANCE:	Mr A Dyson of Colliers acting on behalf of the occupier British Heart Foundation (appellant)
	Mr M Dent representing the Valuation Officer (respondent)

Summary of decision

1. Appeal dismissed. Rateable Value £69,000 with effect 1 April 2017 confirmed.

Introduction

2. This appeal has been brought in respect of the following: An appeal received on 15 January 2021 against the Valuation Officer's Challenge Case Decision Notice dated 16 September 2020.

3. 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.

4. 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.

5. 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.

6. The Valuation Officer had sought the inclusion of new evidence in the form of settled appeals which the panel understood that both parties agreed for its inclusion.

7. Mr Dyson also submitted new evidence on the 17 March 2021 which included rental evidence and also details of a material change in the locality which had occurred in October 2014 to which the Valuation Officer had raised an objection on 18 March 2021. The matter was considered by the Senior Member under Regulation 17A of Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (as amended) which states:

   17A Admission of new evidence on NDR appeal

   (1) The VTE may only admit evidence that was not included in the notice of appeal or any document accompanying the notice of appeal ("new evidence") if –

   (a) that evidence—

   (i) is provided by a party to the appeal;
   (ii) relates to the ground on which the proposal was made; and
   (iii) was not known to the party and could not reasonably have been acquired by the party before the proposal was determined under Part 2 of the NDR Regulations; or

   (b) all the parties to the appeal agree in writing to the party providing the new evidence.

8. The Senior Member considered that the new evidence submitted by the appellant’s representative could have reasonably be acquired by the appellant’s representative before the proposal was determined and issued a certificate dated 8 April 2021 confirming that the new evidence would not be admitted.

9. Mr Dyson appeared on behalf of the appellant as both advocate and expert witness. In view of the Upper Tribunal’s judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Dyson’s declaration of truth included a statement that he was not instructed under any conditional fee arrangement. Mr Dyson 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.

10. The appeal hereditament was a large shop and premises of 929.84 m² in a retail precinct close to the Parishes in Scunthorpe. The property was currently valued at Rateable Value (RV) £69,000 based on a price for zone A of £325 per m². The property, which was previously occupied by Poundland, was close to a multistorey car park which offers two hours free parking during the week and free parking on a Saturday and Sunday and was

also close to the bus station. The area has a number of national retail chains and a Vue cinema. The antecedent valuation date is 1 April 2015 and the material day is 1 April 2017.

Issues

11. The issue before the panel concerned the price per m² in terms of zone A to be applied to the appeal hereditament, the analysed rental evidence and whether the end allowance applied was adequately reflected quantum.

Evidence and submissions

12. Mr Dyson referred to the case of *Lotus and Delta* v *Culverwell (Valuation Officer) and Leicester City Council* [1976] RA 141 and the weighting of evidence. He stated that the October 2017 lease for the appeal property was the starting point. This lease was for 10 years with a five year break clause at a rent of £50,000 per annum and a six month rent free period. He had analysed the rent over a five year term with the full six month rent free period to £214.27 per m². He stated that the Valuation Officer had considered the 2017 rent carried lesser weight as it was two and half years after the antecedent valuation date (AVD) and preferred the 2012 lease of the property which the Valuation Officer had analysed to £537.80 per m² in terms of zone A. However, Mr Dyson considered that the 2012 rent should carry less weight although it was the same distance from the AVD as the 2017 rent. He believed the 2017 rent to be more compelling as in 2012 the rental market was more buoyant than at the AVD and in 2017.

13. Mr Dyson informed the panel that since the 2010 Rating List there had been a major decline with a large number of vacant units within the proximity of the appeal property by the AVD. He did not consider the location to be a prime retail site and although the price per m² was the same as the High Street in the 2010 Rating List he did not consider they were comparable now as evidenced by the values in the High Street being higher per m² than in Jubilee Way. He did not consider the rental evidence from the High Street, submitted by the Valuation Officer, to be of assistance due to the differences between the two areas and also the properties were considerably smaller than the appeal property.

14. He stated that the Valuation Officer had only provided two rents from Jubilee Way which he considered were weak and did not support the £375 per m² in terms of zone A adopted. 26 Jubilee Way was a smaller property and analysed to £328.19 per m² in terms of zone A and the other concerned a Kiosk at 17 Jubilee Way which was only 11 m² and analysed to £737.04 per m² in terms of zone A.

15. Mr Dyson also referred to the Upper Tribunal decision of *Lamb v Go Outdoor* [2015] UKUT 0366 (LC) where it was held the rent on the appeal property carried significant weight even though it was two years after the AVD.

16. He had, in his initial appeal, provided two valuations with the first being based on his analysed rent of the appeal property and a 15% allowance for size and awkward shape and the second based on the £375 adopted by the Valuation Officer with a 30% allowance. He stated that he had now provided a revised valuation based on a value of £265 per m² in terms of zone A and a quantum allowance of 15%. He considered that the 11% allowance for size on the appeal hereditament was not sufficient to reflect the awkward shape of the hereditament as well as the size and considered that 15% allowance was more reflective of the issues.

17. Mr Dyson referred to the settlements introduced by the Valuation Officer. These were where challenges had been made but no appeals had been lodged following the issue of the Valuation Officer's Challenge Notice. He considered that the challenges were weak with no rental evidence disclosed to support any reduction and therefore did not consider them to be of assistance.

18. He requested the panel to allow the appeal and determine RV £46,250 with effect from 1 April 2017.

19. Mr Dent considered that the RV was not unreasonable having regards to the rental evidence and settlements at the adopted price per m² of £375. He also considered that the end allowance for size was adequate having regards to the settlement details. He stated that the rent for the appeal property in August 2012 which analysed to £537.80 per m² and the 2017 rent analysed to £256.45 per m².

20. Mr Dent accepted that the Kiosk at 17 Jubilee Walk was not comparable to the appeal property but it showed that high rents were still being commanded in the locality. He also provided details of rents of another premises in Jubilee Way and in the High Street which he considered to be a similar locality to Jubilee Way. He considered that the basket of rental evidence supported his contention that the rate per m² adopted in terms of zone A was reasonable.

21. As further support of his contention that the price per m² adopted was correct, Mr Dent referred to challenges that had been made in the locality but following the Challenge Decision Notice not to alter the price per m², no appeals were submitted. He also stated that 15% allowance had been given to 11-15 Jubilee Way which was a larger hereditament than the appeal property at 1522 m² and therefore he considered that 11% adequately reflected quantum in the case of the appeal property. He also confirmed that the same percentage allowance had been agreed within the 2010 Rating List.

22. Mr Dent requested the panel confirm RV £69,000 with effect from 1 April 2017.

Decision and reasons

23. Within the evidence, reference was made to the leading judgment of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141, which set out six propositions to be followed when considering the weighting of evidence:

    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 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 differing types of evidence depending on the one hand 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. Whilst the rent on the appeal property is the starting point the panel had to consider how closely the rent was to the rating hypothesis and the AVD. The panel had been provided with analysed rents of the appeal property from 2012 and 2017 which analysed to £537.80 and £214.27 or £256.45 per m² respectfully.

25. The 2017 rent showed a lower value than that adopted but would require adjustment to reflect market trends between the AVD and 2017. Also 2012 rent analysed to a considerably higher value than the price being adopted but would require adjustment again to reflect market trends. The panel therefore considered that as both rents were some distances from the AVD and would require adjustment to accord with values prevailing in April 2015 neither rent could be relied upon in isolation and that regard should also be had to other rental evidence and settlement details.

26. The panel had been provided with a number of analysed rents from Jubilee Way, High Street and other local roads. The appellant's representative had stated that the High Street was not comparable to the Jubilee Way but provided no evidence to support this contention apart from informing the panel that the rate per m² was no longer the same for the two streets and that there were many vacant shops within the locality. The panel considered that as the two street were close to each other their values would be similar. From the basket of rental evidence presented in the whole locality the panel was satisfied that it supported a value of £375 per m² in terms of zone A.

27. The panel also considered the challenges made but not appealed for premises in Jubilee Way. The panel noted the comments of the appellant' s representative about the challenges to be weak but he provided no supporting evidence. The panel considered that the challenges therefore further supported the price being adopted by the Valuation Officer.

28. The panel then considered the issue of the end allowance for quantum. The appellant had sought an increase from 11% to 15% stating that the shop was not only larger than many in the area but was an awkward shape. The Valuation Officer had informed the panel that 11% had been agreed in the previous list and that 11-15 Jubilee Way, which was a larger hereditament at 1522 m², had been given a 15% allowance in this list. The panel had not been provided with any evidence to support an increase in the allowance apart from the layout plan of the premises. The panel considered that if a property over 50% larger than the appeal property was afforded 15% allowance a 11% was sufficient to reflect the size and disadvantage of the appeal property.

29. The burden of proof was upon the appellant's representative but in this instance the panel had not been persuaded that the RV of £69,000 was unreasonable having regard to the evidence presented. The panel accordingly dismiss the appeal.

Date: Tuesday 4 May 2021

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