THE VALUATION TRIBUNAL FOR ENGLAND

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

Re: Bst & Grd Floor, 35 Old Compton Street, London W1D 5JX

APPEAL NUMBER: CHG100129616

BETWEEN:	Libertybelle UK Ltd	Appellant
	and	
	Mr A Ricketts	Respondent
	(Valuation Officer)	

PANEL: Mrs S Nix (Senior Member) and Mr P Phelps

CLERK: Mrs S Morgan

REMOTE HEARING: Tuesday 11 January 2022

PARTIES PRESENT: Mr D Hill of Altus group acting as expert witness

Mr S Carter of Altus Group acting as advocate

Mr C Tawonezvi for the valuation office acting as both advocate and expert witness.

Summary of decision

1. The appeal was dismissed. The panel confirmed the appeal property had been correctly valued as a shop and premises at £133,000 rateable value (RV) with effect from 1 April 2017.

Introduction

2. 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.

3. 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.

4. In accordance with that Practice Statement, the VTE conducted the hearing of this appeal remotely via a Microsoft Teams conference call using an audio/video-link.

5. This appeal was brought in respect of Bst & Grd Floor, 35 Old Compton Street, London (the appeal property). The appeal property is a shop and premises which consists of 105.45m^2 of retail space. It is located in the Soho area of London within close proximately of other retail and office units.

6. This is a 2017 Rating List appeal, and the RV of the appeal hereditament was £133,000 with effect from 1 April 2017. The appellant's representative sought an initial reduction to £101,000 RV. This was amended to £123,000 RV in later evidence.

7. The challenge submission was received on 26 March 2021. The grounds for the challenge disputed the accuracy of the of the RV in the Rating List on 1 April 2017.

8. Mr Hill appeared on behalf of the appellant as an expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson* (VO*)* [2018] UKUT 0253 (LC), Mr Hill's declaration of truth included a statement that he was instructed under a contingency based fee.

9. Mr Hill also 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 his client's case.

10. The panel accepted this expert witness evidence on the above basis as the parties agreed the appeal was not complex and to do otherwise would be contrary to regulation 3 (Discharge of Valuation Tribunal for England (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. 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 item of evidence, should not be construed as it having been overlooked.

Issue

12. The appellant's representative contended that the base rate adopted in the assessment was excessive. He sought a reduction to £2,800.00/m² whilst the Valuation Officer's representative contended that £3,000.00/m² was reasonable.

Evidence and submissions

13. The bundle comprised all of the documents exchanged between the parties as part of the challenge process. This included: the challenge document and supporting evidence; the Valuation Officer's initial response; email exchanges during the challenge process; comparable properties; rental evidence, a graph showing the trend in rental evidence; photographs of the appeal property and comparable properties; definition of rateable value and case law.

14. In support of his case, the appellant's representative had taken rents from 2011 through to 2016 for properties in Frith Street and Old Compton Street. He had then taken the average rent and provided a graph showing the trend line of these rents. It showed at AVD the Zone A rate would equate to £2,800/m^2. Having regard to his evidence, the appellant's representative sought a revised assessment of £123,000 RV for the appeal property, based on a Zone A value of £2,800/m^2.

9. The respondent provided rental details for a number of properties in Old Compton Street which he believed supported the current Zone A price of £3,000/m^2. Ignoring Grd Floor, 7 Old Compton Street, as this was some distance away from the appeal property, the analysed rents for the remaining comparable properties taken from June 2014 to September 2015 ranged between £2,700/m^2 to £3,400/m^2. Therefore, based on the basket of rental evidence, a Zone A figure of £3,000/m^2 did not appear excessive. The respondent therefore sought a dismissal of the appeal.

Decision and reasons

15. The main issue in dispute concerned the level of value to be adopted for the appeal property.

16. 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".

17. In respect of an appeal against an entry in the 2017 rating list, 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 (SI 2014 No. 2841).

18. The material day (the date by which physical factors have to be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject appeal, the material day is 1 April 2017.

19. Both parties had referred to *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141. This Lands Tribunal judgment provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property was considered to be the correct starting point but, where available, rents on similar properties were also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.

20. The appeal property was taken on a 10-year lease from 2012 at £120,000 pa. A rent review was due in 2017 where the rent remained at £120,000. Taking an ITMS of 45.68m^2, this analysed to £2,626/m^2.

21. The panel considered that the rent in 2012 being approximately three years prior to the AVD was not decisive but also noted the nil increase in 2017 on a rent review. Looking at both, the panel was of the opinion that these rents provided a useful but far from conclusive starting point, particularly being mindful of 2017 being a rent review and bearing in mind the hierarchy of evidence.

22. The panel went on to consider the other rents for the comparable properties provided by the parties.

23. The appellant's representative referred to a number of comparable properties that were situated within the same road as the appeal property and some which sat on the corner of the parade with other streets. He argued that values fell away the further east you moved along Old Compton Street.

- Grd floor, 48 Old Compton Street was located opposite the appeal property. The rent here was £82,500 pa from September 2014. This analysed to £2,272/m^2. The appellant's representative contended that this supported a lower Zone A rate for the appeal property.

- The rent passing on Bst and Grd Floor, 39 Old Compton Street was £170,000 pa (adjusted to £160,026 pa) from August 2014. This analysed to £3,082/m^2.

- The 2011 rent passing on Grd Floor 40 Old Compton Street was £91,838. This analysed to £2,274/m^2.

24. Rents were also provided for 42 Frith Street where the rent passing in 2016 was £90,000, which analysed to £2,745/m^2 and 43 Frith Street where the rent passing in 2016 was £163,500, which analysed to £3,136/m^2.

25. In his response to the respondents evidence, the appellant's representative argued that Bst and Grd Floor, 39 Old Compton Street was of a different mode or category and therefore not that helpful. In addition, he suggested to the tribunal that the parade where the appeal property was situated was less valuable than those to the West of the parade going towards China Town, Leicester Square and Piccadilly Circus and that the difference between the parades was supportive. The panel resolved to explore that hypothesis more closely, looking at the evidence both parties had presented.

26. In support of his case, the respondent referred to five pieces of rental evidence, all within ten months either side of the of AVD.

27. There were two new lettings;

- Grd Floor 45 Old Compton Road analysed to £3,125/m^2 on a rent from June 2014 and Bst and Grd Floor 39 Old Compton Street analysed to £3,082/m^2 from a rent in August 2014.

28. There were two lease renewals;

- Grd Floor, 48 Old Compton Street which analysed to £2,700/m^2 from a rent passing in September 2014 and on 52 Old Compton Street the rent analysed to £3,413/m^2 from September 2015.

29. In his response to the appellant's representative's evidence, the respondent stated that for Grd Floor, 48 Old Compton Street, the rent was analysed to the total area rather than ITMS, as it should have been. Taking the ITMS of 30.44m^2 for this property, the rent would analyse to £2,700/m^2 rather than £2,272/m^2 has originally suggested by the appellant's representative. The panel preferred the respondent's analysis.

30. There was also a September 2014 rent review on Grd Floor, 41 Old Compton Street, which analysed to £2,909/m^2.

31. In providing rental details for these properties in Old Compton Street, the respondent believed that they supported the current Zone A price of £3,000/m^2. He therefore sought a dismissal of the appeal.

32. Having regard to the locality of the comparable properties to the appeal property, the panel attached weight to the plan showing where each of the properties were located. Those in Frith Street were noted by the panel to be in a different valuation scheme. It was apparent that the Firth Street properties were valued at a Zone A rate of £2,500/m^2 and those on Old Compton Street at a Zone A rate of £3,000/m^2. This latter figure being applied to all those properties within valuation scheme 432774, which included the appeal property. It was therefore the panel's opinion that there was a difference in value between Firth Street and Old Compton Street and as such the evidence should be weighted accordingly.

33. Further examination was given to the parade of shops where the appeal property was situated. This included Bst and Grd, 39 Old Compton Street and Grd Floor, 48 Old Compton Street. The appellant's representative argued that the analysed rent for Bst and Grd Floor, 39 Old Compton Street could be higher as it was situated on a corner plot and was occupied as a restaurant, which suggested a different mode or category of use. The panel noted that the respondent could not comment on this latter suggestion and therefore, it found the analysis of the appellant's representative more persuasive.

34. Included in the next parade down, further West, were Grd Floor, 41 Old Compton Street, Grd Floor, 45 Old Compton Street and 52 Old Compton Street, which ranged from £2,909/m^2 to £3,400/m^2. These properties, in this parade, showed an increase in value, an argument put forward by the appellant's representative.

35. In conclusion, mindful of the burden of proof being on the appellant, the panel decided it could not attach significant weight to the actual rents of the appeal property, being some distance away from AVD and the 2017 event being a rent review. In looking at the other evidence, the panel discounted the Frith Street evidence as these properties were located further away and had been placed in a different valuation scheme. The panel also found that the 2011 rent on Grd Floor, 40 Old Compton Street was too far away from AVD to be useful.

36. Regarding Bst and Grd Floor 39 Old Compton Street, the panel accepted the appellant's representative's analysis of it being a different type of property and, as such, it did not find it comparable to the appeal property. Whilst the panel acknowledged the rental evidence provided for Grd Floor, 48 Old Compton Street, was in the same parade of shops opposite the appeal property, which could be said to support the appellant's case, it was only evidence of one property on a lease renewal. The panel did not feel there was sufficient evidence to conclude, as the appellant's representative had suggested, that the parade where the appeal property was situated was any less valuable than those to the West of the parade going towards China Town, Leicester Square and Piccadilly Circus.

37. The panel found that the best evidence was the rental evidence closest to AVD of units within close proximity to the appeal property. The basket of rental evidence including rents, lease renewals and rent reviews put forward by the respondent, many close to AVD, did not support the appellant's representative's contention that the current RV was excessive.

38. The appeal was therefore dismissed.

Date: Thursday 3 February 2022
Appeal number: CHG100129616