THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rates; 2017 rating list appeal; shop and premises; Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council [1976]; rental evidence; correct unadjusted rate to be applied to the subject property's assessment; appeal allowed.

Re: (& 7-10 Bateman St) Grd Flr, 55 Frith Street, London W1D 4SJ

APPEAL NUMBER: CHG100132649

BETWEEN:	Northwood Investors International Limited	Appellant
	and	
	Mr A Ricketts (Valuation Officer)	Respondent

PANEL: Ms N E Talbot-Hadley (Senior Member)
Mr C J Sanford

CLERK: Mrs C McAvoy

REMOTE HEARING No.1 on 7 April 2022

APPEARANCES:

Mr H Edwardes of Altus Group Limited on behalf of the appellant
Mr C Cates on behalf of the respondent Valuation Officer

Summary of decision

1. Appeal allowed; the appeal property's assessment was reduced to £97,000 Rateable Value (RV) with effect from 1 April 2017.

Introduction

2. This appeal had been brought in respect of the following: (& 7-10 Bateman St) Ground Floor, 55 Frith Street, London W1D 4SJ which was entered in the 2017 Rating List at £145,000 rateable value (RV), effective from 1 April 2017.

3. Following the check being submitted, the RV was reduced to £136,000 effective from 1 April 2017. On 10 October 2019, a proposal was made

challenging the list entry. In the Valuation Officer's (VO) initial response to the challenge where the proposed RV was not well founded, the VO agreed that the quality uplift should be removed. Consequently, the RV was reduced to £121,000 with effect from 1 April 2017. A challenge decision notice was issued on 19 February 2021 to this effect.

4. The agent on behalf of the appellant still considered that the tone applied to the appeal property was excessive and should be reduced. The unadjusted rate (UAR) was £2,000/m^2, he proposed a reduced UAR of £1,600/m^2 resulting in a reduced RV to £97,000. An appeal was therefore made to this Tribunal in response to the challenge decision.

5. The appeal property was shown in the list as shop and premises. It was an end-terraced building arranged over four floors with retail space occupying the ground floor and was located on the west side of Frith Street at the junction with Bateman Street.

6. Mr Edwardes 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), his declaration included a statement that he was instructed under a contingency based fee.

7. Within his written statement and confirmed at the hearing, Mr Edwardes 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.

8. The panel accepted this expert witness evidence on the above basis as the appeal was not 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 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).

9. The panel therefore considered the "expert" evidence and attached such weight to it as it saw fit.

10. 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

11. The issue between the parties concerned the RV of the appeal property and, specifically, the UAR that should apply. The VO considered that the adopted £2,000/m^2 was reasonable, but the appellant's representative considered this to be excessive and sought a reduction to £1,600/m^2.

Evidence and submissions

12. The evidence bundle provided comprised all the submissions exchanged between the parties as part of the challenge process. Further to this, Mr Edwardes had submitted late evidence on 9 March 2021. Mr Cates agreed to its admission and the evidence was therefore admitted by the panel under regulation 17A (1)(b) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (as amended).

13. Mr Edwardes submitted that, due to the nature of the rent agreements in respect of the appeal property, he had not attached great weight to them and therefore had considered the rental and tonal evidence for surrounding comparable assessments. He also referred to settlements in the locality and provided a schedule of shops located on streets adjacent to Frith Road, specifically, Greek Street, Dean Street and Bateman Street.

14. Considering the basket of evidence and taking a stand back and look approach, as the final part of the valuation process, he submitted that the £1,600/m^2 was a fair value to adopt. He therefore sought a reduced RV of £97,000 with effect from 1 April 2017.

15. Mr Cates commented on the short, fixed term periods in respect of the rents for the appeal property and commented on the comparability of assessments referred to within the rental evidence. He submitted that properties situated on the parallel streets would have their own localised market.

16. Based on the evidence brought, Mr Cates position was that the current RV was fair and reasonable. He therefore sought dismissal of the appeal.

Decision and reasons

17. In considering this appeal, the panel had regard to the term ‘rateable value’ as 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".

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

19. In reaching its decision, 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 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.'

20. Bearing these six propositions in mind, the panel acknowledged that the starting point in this appeal was the actual rent passing on the appeal property. Mr Edwardes had provided a total of four different rental agreements: £90,000 with effect from 16 April 2016 (lease renewal); £70,000

with effect from 10 May 2017 (new lease); £70,000 with effect from 1 July 2018 (new lease); and £60,000 with effect from 31 July 2019 (new lease).

21. The panel had regard to the fact that the terms of the lease agreements had not been verified and therefore were unable to determine what adjustments would be required to conform with the statutory hypothesis. Furthermore, they were short leases made outside of the Tenant and Landlord Act.

22. The panel therefore agreed with the parties that the subject rent was not of great assistance and therefore found it necessary to turn to the third proposition and examined rents passing on comparable properties. It considered the correct approach in this appeal was to examine the whole 'basket of evidence'.

23. The panel had regard to the rental evidence provided:

- **43, Frith Street, London W1D 4SA**
  The Valuation Office Agency's (VOA) form of return (FOR) provided a rent review for £133,750 with effect from 5 February 2012 and a rent review for £163,500 with effect from 5 February 2016. It was shown in the list with an UAR of £2,500/m^2. The VOA had analysed the rents to £2,566.19/m^2 and £3,136.99/m^2 respectively.

- **BST & GRD FLR 39, Frith Street, London W1D 4SQ**
  The parties held different rental information for this property. Mr Edwardes had provided a lease renewal for £30,000 rent with effect from 19 June 2014. Mr Edwardes had analysed this to £1,553.60/m^2. The VOA's FOR provided details of a new lease for £37,500 rent with effect from 1 January 2014, which the VOA had analysed to £1,941.99/m^2.
  This property was originally shown in the list with a UAR of £2,000/m^2 but following a well-founded challenge it had been reduced to £1,600/m^2 with effect from 1 April 2017.

- **GRD FLR 50, Frith Street, London W1D 4SQ**
  FOR details held a rent review for £63,875 with effect from 24 June 2014. It was shown in the list with a UAR of £2,000/m^2. The VOA had analysed this to £1,591.70/m^2.

24. 43 Frith Street was situated in a prominent corner location with return to Old Crompton Street. Old Crompton Street had a large footfall, being a more prominent location close to theatres, cafes, and restaurants and Mr Edwardes argued that 43 Frith Street skewed the results as it was valued in line with shops on Old Crompton Street. Mr Cates submitted that this difference was reflected in the UAR. It was on the same parade but valued higher at £2,500/m^2.

25. The panel found it to be reasonable to expect that properties closer to Shaftesbury Avenue would be of greater value due to the location and increased footfall. Although the panel agreed the parallel streets would have

a localised market, it did support that the properties further south were valued higher. It also demonstrated that corner shops on Old Crompton Street were assessed at a higher UAR. In comparison to 43 Frith Street, 39 Frith Street was situated further south after the Old Crompton Street break but had recently been reduced to £1,600/m^2. The panel found that this supported the contention that the rent for 43 Frith Street was in line with other units along Old Crompton Street and not in line with shops on Frith Street.

26. In respect of GRD FLR 50, Frith Street, it was closer to the appeal property and the rent had been agreed nine months prior to the AVD. The rent had been analysed to £1,600/m^2 which supported the proposed UAR. At the hearing, Mr Cates argued that this was not comparable as it was a restaurant not a shop and in February 2021 it was amended and now valued on an overall basis. The panel had regard to the valuation provided within the evidence which detailed this property being valued as 'Shop and Premises' and the VO comments contained within the response which stated it was a restaurant valued on a zoned basis. Mr Cates submitted that it cannot be assumed that this was a change, it could have been a correction to the list. When asked, Mr Cates could not provide the reason for the change as he was not privy to the information but stated that it was following a check and challenge being submitted. No evidence of the change was provided, and the panel therefore accepted the valuation presented before it.

27. In addition to the rental evidence, Mr Edwardes provided settlement details for 35, Frith Street, London W1D 5LQ. This property was originally shown in the list with a UAR of £2,000/m^2 but following an agreed check it had been reduced to £1,600/m^2 with effect from 1 April 2017. This was also a corner property, south of the appeal property, so closer to Shaftesbury Avenue. The panel attached significant weight to this evidence which, in the panel's view, supported that the UAR of £2,000/m^2 appeared to be excessive.

28. The panel attached little weight to Mr Cates submission regarding the difference in the sizes. There was a lack of rental evidence available for shops on Firth Street and, in any case, the panel was considering the price per m^2 to be adopted.

29. Having regard to the analysed rent of £1,600 for 50 Frith Street, together with the settlements for 35 and 39 at a UAR of £1,600/m^2, the panel found that this supported the fact that there was a shift in the tone for shops on Frith Street and that the proposed reduction to £1,600 was supported.

30. In conclusion, the panel considered Mr Edwardes proposed valuation at £97,000 based on a UAR of £1,600/m^2 to be reasonable and the appeal was therefore allowed.

Order

31. Under the provisions of regulations 38(4) and 38(10) 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 2017 rating list to show the following:

(& 7-10 Bateman St) Grd Flr, 55 Frith Street, London W1D 4SJ

£97,000 effective from 1 April 2017

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

33. 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: 28 April 2022

Appeal number: CHG100132649