THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 list appeal; comparable properties; subject rent; Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council 1976; appeal allowed.

Re: 341-343 Roman Road, London E3 5QR

APPEAL NUMBER: CHG100140236

BETWEEN:	Hillgate Investments Ltd	Appellant
	and	
	Mr Andrew Ricketts (Valuation Officer)	Respondent

BEFORE: Mr J Rockliff (Senior Member sitting alone)

CLERK: Mrs C McAvoy

REMOTE HEARING No.1 on 19 May 2022

APPEARANCES:

Mr Andrew Bacon of JMA Chartered Surveyors for the Appellant
Ms Dipali Pathak for the Respondent

Summary of decision

1. Appeal allowed; the appeal property's assessment was reduced to £25,500 with effect from 1 April 2017.

Introduction

2. On the day of the hearing, my colleague who was due to sit with me was experiencing IT issues and was unable to connect to the remote hearing of this appeal. As a senior member to the Tribunal, and in such circumstances, in accordance with the Tribunal's Business Arrangements, I was authorised to hear this appeal sitting alone.

3. This appeal had been brought in respect of the following: 341-343 Roman Road, London E3 5QR which was entered in the 2017 Rating List at £33,750 Rateable Value (RV), effective from 1 April 2017.

4. The appeal property was shown in the list as shop and premises but had since been altered to estate agent and premises. The unit was a traditional shop built between 1900 and 1910 of brick construction with low pitched or flat roof and is of a late Victorian/early Edwardian character with larger sash windows on upper floors and parapet at roof level. It was located on a parade of similar retail premises on Roman Road which is situated between South Hackney and Globe Town in the east end of London. The closest underground station at Mile End is 0.5 miles to the south and the location also benefits from being a short walking distance from the popular green spaces of Victoria Park and Regents Canal. The subject property is used as the offices for an estate agent.

5. Mr Bacon, on behalf of the appellant, proposed a revised RV of £25,500 with effect from 1 April 2017.

6. Mr Bacon 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), he declared that he was instructed under a contingency based fee.

7. At the hearing, Mr Bacon, 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. I 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. I therefore considered the "expert" evidence and attached such weight to it as I 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 me before coming to my 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 for consideration was the correct RV of the appeal property.

Evidence and submissions

12. The evidence bundle provided comprised the submissions exchanged between the parties as part of the challenge process.

13. Mr Bacon submitted that the passing rent on the appeal property should be the starting point when determining a suitable RV. He submitted that the rent agreed for the subject property was £24,500 from 23 March 2011 on an FRI basis. On a rent review dated 23 March 2016, the rent was agreed at £25,500.

14. Mr Bacon submitted that the subject property was a large double unit used by an estate agent. The subject property is situated in an unusual and isolated location in Roman Road, being the last shop before the church and with no shops opposite. The parade ends at 349 Roman Road and so the only rent offered for comparison on the parade is 347 Roman Road, however, these were 2012 and 2017 rents on a shop that is approximately a quarter of the size of the subject property. He submitted that the smaller properties benefited from small business rate relief which distorted that market.

15. He therefore submitted that the VO's evidence is drawn from smaller premises which were not comparable and considered that the VO'S reasoning behind the rejection of the rent passing was unsubstantiated.

16. Having regard to *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141 he considered the subject rent to be the best evidence and therefore sought a reduced RV of £25,500 with effect from 1 April 2017.

17. Ms Pathak appeared as advocate only. She submitted that the passing rent of the subject property could not be relied on. Her research indicated a form of return (FOR) on 12 October 2011 for £25,500 which she considered suggested that at the last review there was no increase to the rent. She also noted it was a 15-year lease from 2005 and as such the last review in 2016 was the final review before the lease was spent. She therefore submitted that this could suggest that the passing rent could reflect the fact that the lease was coming to an end and the Landlord could be keen to retain the current tenant demonstrating a pre-existing relationship between the parties. Therefore, it is the VO's contention that it does not reflect typical rental agreements especially as there appears to be no increase in the rent.

18. Ms Pathak's position was that little weight could be attached to the subject rent and referred to a rental schedule of what she deemed to be similar retail premises in the locality. These ranged in size from 18.55m^2 to 42.91m^2 (in terms of main space) and had been let on new or renewal leases between February 2014 and August 2017. The rents had been analysed to £434.07 to £824.30/m^2. All were assessed at £450/m^2. Ms Pathak considered that having regard to the basket of rents and the tone of £450/m^2 adopted, the current assessment of £450/m^2 was fair and reasonable. She therefore sought dismissal of the appeal.

Decision and reasons

19. In considering this appeal, I 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;
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> 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".

20. 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.

21. In reaching my decision, I had regard to the Lands Tribunal judgment of *Lotus & Delta v Culverwell*). 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.'

22. Bearing these six propositions in mind, I acknowledged that the starting point in this appeal was the actual rent passing on the appeal property. The subject property was held on a lease from 23 March 2011 at a rent agreed of £24,500 on an FRI basis. The rent was revised on 23 March 2016 to £25,500.

23. I did not attach weight to Ms Pathak's reasoning for rejecting the rent as there was no evidence presented to support that the rent was lower to retain the tenant on the rent agreed in 2016 pursuant to a lease ending in 2021. Further, the FOR had not been provided regarding the 2011 rent being referred to. Mr Bacon had provided a copy of the agreement dated 21 March 2011 which provided an annual rent of £24,000 per annum. This therefore demonstrated that the rent had not stayed the same as Ms Pathak has asserted.

24. I accepted that the passing rent supported that the current rate adopted appeared excessive. However, given it was a renewal post AVD and therefore required adjustment to bring it in line with the rating hypothesis, I also found it necessary to turn to the third proposition and examined the rents passing on comparable properties.

25. Ms Pathak had presented a schedule of comparable rental evidence; however, no rental information had been provided in support of this to allow Mr Bacon to analyse the rents. The remarks column suggested that most of the evidence was derived from FOR's but Mr Bacon, nor indeed I, had not been provided with the information held. Mr Bacon submitted that there was far too little information to determine if the tone set was accurate based on the definition of rateable value. Furthermore, the properties were all considerably smaller units. The appeal property was a larger premises at 129.51m^2 (73.54m^2 in terms of main space) at the end of the parade and as such the evidence presented was not directly comparable. I was persuaded by Mr Bacon's argument that the smaller properties in the parade would achieve higher per m^2 rents because they were likely to be receiving small business rate relief.

26. Whilst I accept Ms Pathak's submission that the burden of proof rest with the appellant, the VO also have an evidential burden to support that the current assessment is fair and reasonable. The evidence provided for considerably

smaller properties and rental terms could not be verified, I therefore attached less weight to this evidence. The appellant had provided the rental details and, indeed, the lease on the appeal property. Having regard to *Lotus & Delta v Culverwell* I found that I was unable to reject the passing rent when there were no direct comparable properties presented. The rent was agreed at £24,500 and the review, which was closer to the AVD, was agreed at £25,500.

27. Given the appeal property's size and location, which was the last shop before a church with no shops opposite, I considered that the rent achieved, on full FRI terms and so requiring little adjustment to conform with the statutory definition, provided good evidence of what the hypothetical tenant would have been willing to pay at the AVD.

28. In view of the foregoing, I found the proposed RV of £25,500 to be reasonable and the appeal was allowed.

Order

29. Under the provisions of regulations 38(4) 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:

    341-343 Roman Road, London E3 5QR
    £25,500 effective from 1 April 2017

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

Refund of fee

31. 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: 8 June 2022

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