THE VALUATION TRIBUNAL FOR ENGLAND

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

Re: Unit 2, Longshaw Street, Warrington WA5 0FF

APPEAL NUMBER: CHG100140917

BETWEEN:	Dallam Stores	Appellant
	and	
	R Roberts (Valuation Officer)	Respondent

BEFORE: Dr J Johnson (Senior Member sitting alone)

CLERK: Mrs C McAvoy

REMOTE HEARING No.4 on 20 October 2021

APPEARANCES:

Mr B Gilkes of Peter E Gilkes & Co on behalf of the appellant as both advocate and expert witness.
Mr J Green on behalf of the respondent Valuation Officer as both advocate and expert witness.

Summary of decision

1. Appeal allowed in part. I considered that the existing entry in the Rating List for the appeal property was not reasonable and found that a rate of £65m^2 should be adopted.

Introduction

2. This appeal has been brought in respect of the following: Unit 2, Longshaw Street, Warrington WA5 0FF which was originally entered in the 2017 Rating List at £29,250 Rateable Value (RV) effective from 31 October 2017.

3. The appeal property, a newly built single storey store, was valued as a shop and premises and was occupied by Dallam Stores operating as a Nisa Local convenient store situated two miles north of Warrington Town Centre.

4. Prior to 21 October 2017, the appellant was trading from 1-5 Harrison Square, Warrington, WA5 0HQ, which was a larger two storey building convenience store. Following the sale of the freehold, the appellant entered negotiations to surrender their existing lease to relocate close by. This was to allow the construction and development of 24 residential dwelling units and 2 retail units, the appeal property and a pharmacy.

5. The appellant's challenge to the Valuation Officer (VO) was made on 11 November 2019. As part of the challenge process, the VO reduced the RV to £20,250 which was based on an overall rate of £90 per m^2.

6. Mr Gilkes, on behalf of the appellant, disputed the valuation approach as he considered that the appeal property should be valued on a zoned basis at a price of £36 per square meter zone A and that the VO should have consideration of the storage area behind a stud wall which should be of lesser value. He proposed a revised RV of £5,950.

7. An appeal to this Tribunal was made following the VO's Decision Notice of 14 December 2020.

8. The Tribunal Business Arrangements provide that a hearing will normally take place before a panel of two Members of the Tribunal, including at least one Senior Member. However, the arrangements also provide that a Senior Member may sit alone to avoid a postponement of the hearing where a second Member of the Tribunal is unable to sit.

9. In respect of this hearing, another Member of the Tribunal was unable to sit. I am therefore satisfied that, in order to avoid a postponement of the hearing, I am authorised by the Tribunal Business Arrangements to hear and determine this appeal sitting alone.

10. 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.

11. 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.

12. In accordance with that Practice Statement, the hearing of this appeal was conducted remotely via Microsoft Teams conference call using audio/video-link. For the avoidance of any doubt, I was satisfied that those present at the hearing were able to fully participate in the proceedings.

13. Mr Gilkes 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.

14. Within his written statement, Mr Gilkes 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.

15. 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).

16. I therefore considered the "expert" evidence and attached such weight to it as I saw fit.

17. 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 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

18. The issue was whether the appeal property's current assessment at £20,250 RV was reasonable.

Evidence and submissions

19. The evidence bundle provided comprised all the submissions exchanged between the parties as part of the challenge process. Mr Gilkes had further provided his statement of case to the Tribunal on 21 September 2021. To comply with the evidential restrictions under regulation 17A of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (SI 2009/2269), in advance of the hearing both parties agreed, in writing, for this to admitted.

20. Mr Gilkes gave an overview of the reasons for the appeal. He referred to the historic assessment at 1-5 Harrison square, Warrington WA5 0HQ. This was shown in the rating list at £12,000 RV with effect from 1 April 2017. He therefore questioned how the previous store, which was larger, could be

valued at £36 per m^2 in terms of zone A and the new store, which was located just 30 metres from the previous premises, was valued at £90/m^2 (on an overall basis), a significant increase.

21. Mr Gilkes provided further information and statistics to demonstrate the differences in the locality to that of the properties deemed comparable by the VO. He also stated his concerns over the storage area separated by a stud wall, in which the VO had adopted the same £/m^2 as the retail space.

22. Mr Gilkes, on behalf of the appellant, sought a reduced RV of £5,950.

23. Mr Green, on behalf of the VO, questioned the comparability of the historic assessment at 1-5 Harrison Square and referred to the comparable properties, which he contended supported the current assessment both in terms of the valuation approach and the price per m^2 adopted, submitting that the subject rent could not be relied on. He submitted that as the rent on the appeal property was agreed three years post AVD and was negotiated as part of a development, this would require too much adjustment to meet the rateable value statutory hypothesis.

24. Mr Green sought confirmation that the current RV of £20,250 was reasonable and submitted that the rental evidence provided supported this.

Decision and reasons

25. In considering this appeal, I had regard to 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".

26. The antecedent valuation date (AVD) for 2017 list rating appeals is 1 April 2015. As this appeal concerned a challenge to the list entry, in accordance

with Non-Domestic Rating (Material Day for List Alterations) Regulations 1992, the material day is 31 October 2017, this being the date the appeal property entered the rating list. This is the date I had regard to the physical factors relating to the appeal property and its locality.

27. In reaching my decision, I 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 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.’

28. Bearing these six propositions in mind, I acknowledged that the starting point in this appeal was the actual rent passing on the appeal property. A fifteen-year lease on full repairing and insurance terms was agreed on 27 July 2018. There appeared to be conflicting information as to rental terms provided on the Form of Return and the terms in which Mr Gilkes had stated within the challenge exchange. Mr Gilkes, who had personally been involved with the lease and had provided a copy of the head of terms, submitted that it was £10,000 per annum for the first three years, increasing to £12,000 per annum on year 4 with a three-month rent free and break clause at year five. A

£60,000 capital sum was paid as a reverse premium to assist with fit out costs.

29. As the rent was agreed three years post AVD and negotiations made due to it being part of a redevelopment scheme involving the tenant re-locating, I agreed with Mr Green's argument that it was too far removed from the statutory definition to be of great assistance. I therefore found it necessary to consider the rental evidence for the properties provided by each party which they considered to be comparable.

30. Mr Green on behalf of the VO provided me with the following rental evidence, all of which were shown in the rating list as 'Shop and Premises':

Address	**Total Area m^2**	**Effective date of rent**	**Rent**	**Analysed rent**	**Asst. unit value £/m^2**	**Rateable value**
7 Admirals Road, Birchwood, Warrington WA3 6QC	290.96	29 Sep 2013	£22,000 New 10 year lease FRI	£84.30	£100	£26,000
Spar Retailers, Cinnamon Lane, North Fearnhead, Warrington WA2 0AW	251.70	1 Oct 2013	£23,875 New 15 year lease FRI	£94.85	£90	£22,500
44 Gorse Covert Road, Birchwood, Warrington, WA3 6UG	211.40	29 Oct 2013	£20,900 New 15 year lease FRI	£98.86	£100	£22,250
Supermarket Concord Place, Poplars Avenue, Warrington WA2 9NA	232.82	24 Jun 2014	£28,982 Rent review. FRI	£124.48	£100	£24,500

31. I was aware that zoning is a tool to use the rental evidence to value small to medium sized shops., Larger stores tend to be valued on an overall basis. The point at which a shop becomes a large shop depends on evidence from the local market.

32. The appeal property's Gross Internal Area (GIA) was 210.4m^2. Having regard to the four properties presented by Mr Green as shown above, these were all valued as shop and premises within Warrington and had been valued on the overall method. The total area ranged from 211.40m^2 to 290.96m^2. Mr Green had also provided me with layout plans of the properties which demonstrated that they had similar layout and storage areas. The properties had been valued on an overall basis in accordance with their GIA. He submitted that the price per m2 takes this into account i.e., that the GIA includes space which is of lesser value such as storage and staff toilets.

33. I was satisfied that the comparable properties demonstrated a consistent approach within the local market, in that convenience stores of this size were valued on an overall basis and the rents were analysed across the whole area, inclusive of ancillary space. I therefore found the valuation method to be reasonable for the appeal property.

34. I next turned my considerations to the price per m^2. The comparable properties ranged from £90-£100m^2 but I found it necessary to consider Mr Gilkes concerns regarding the comparability of their localities.

35. Mr Gilkes submitted that the appellants previous store at 1-5 Harrison Square, Warrington WA5 0HQ was shown in the rating list at £12,000 RV with effect from 1 April 2017. The relocation to the appeal property was within 30 metres of the previous store at 1-5 Harrison Square. He stated that the location of the new store had suffered reduced footfall due to access now being required at a road crossing and roundabout with the property being further away from the local school.

36. Mr Gilkes submitted that the appeal property is within the Ward of Bewsey and Whitecross within Warrington with the nearby school being Dallam Community Primary School. Providing a link as reference to the sources used, he submitted that the area is predominantly social housing accommodation and, according to the School Performance Report, pupils eligible for free school meals at any time during the past year (with the figures taken from the 2018/2019 academic year) equates to 46.3%, double the average for mainstream primary schools in England. In the Bewsey and Whitecross Ward Profile 2015, the Ward was ranked 1 of 22 Wards of Warrington for Out of Work Benefits (where 1 is the worst performing). The joint strategic needs assessment for Social-Economic Deprivation Chapter 2019 provided by Warrington Borough Council stated that Bewsey and Whitecross was ranked 2 in the index of Multiple Deprivation 2019 (where 1 is the most deprived).

37. In respect of the comparable properties provide by Mr Green, Mr Gilkes provided comments on each. No weight was attached to his comments regarding Supermarket Concord Place as the incorrect property had been compared. In respect of the other three, he provided photographs and submitted that they were located in more affluent neighbourhoods. In respect of 7 Admirals Road, the rent was £22,000 per annum and Mr Gilkes submitted that this was within a mixed established residential parade including the convenience store, a post office and a takeaway. There is a church located

opposite, a bus stop and a large free communal car park, a public house, and a playgroup and school.

38. The convenient store on Cinnamon Lane, North Fearnhead, Warrington, had been valued using the same rate of £90/m^2 and had a rent agreed at £20,900 approximately one and half years prior to the AVD. Mr Gilkes submitted that this included a post office, a public house, delivery access to the front and rear and thirteen car parking spaces. It served a modern private housing estate and some of the surrounding houses could be seen in the photograph provided.

39. Whilst Mr Green submitted that the comparable properties were all within no more than five and half miles of the appeal property, I found that even the slightest change in locality can impact the rental value. I attached weight to Mr Gilkes submission regarding the appeal properties immediate locality and I found that, given the statistics, it is reasonable to conclude that this would be a less desirable location to a hypothetical tenant fresh to the scene. Taking a stand back and look approach, considering the locality as at the material date, a hypothetical rent of £20,250 would appear excessive and unreasonable.

40. As the degree of comparability in terms of the locality had to be considered, I found it necessary to view the evidence as a whole and whilst the subject rent would require adjustment to meet the statutory definition, in the absence of comparable assessments in the immediate locality, I found it necessary to attach some weight to this. Having regard to the rent on Cinnamon lane in combination with the passing rent on the appeal property, I found that the proposed rate of £36/m^2 to be too low.

41. In view of the foregoing, having consideration of the evidence presented, I concluded that a rate of £65/m^2 on an overall basis to be fair and reasonable. The price adopted for the air conditioning system was not in dispute and therefore my revised valuation is as follows:

Description	Area m2	£ per m2	Value (£)
Ground Floor Sales	207.34	65.00	13,477.10
Staff toilets	3.06	65.00	198.90
Air conditioning	210.44	7.00	1,473
		Total	15,149
		RV (rounded down)	15,000

42. The appeal was therefore allowed in part.

Order

43. Under the provisions of regulations 38(4) and 38(7) 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:

Unit 2, Longshaw Street, Warrington WA5 0FF
£15,000 RV effective from 31 October 2017.

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

45. 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: 4 November 2021

Appeal number: CHG100140917