THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 list appeal; shop and premises; Lotus and Delta Ltd v Culverwell (VO) and Leicester City Council 1976 [RA 141]; tone of the rating list, rental evidence; appeal dismissed.

Re: 5 Gomond Street, Hereford, HR1 2DP ("the subject property")

APPEAL NUMBER: CHG100143736

BETWEEN: Claire's Accessories UK Ltd Appellant

(represented by Lambert Smith Hampton)

and

Mr D Virk Respondent

(Valuation Officer)

PANEL: Mrs L Bryning (Senior Member)

Mrs N C Yang

CLERK: Mrs A Sloan

REMOTE HEARING: 17 August 2021

PARTIES PRESENT: Mr D Bullimore (Appellant's representative)

Mr D Humes (Valuation Officer's representative)

Summary of decision

1. The appeal was dismissed and the Rateable Value (RV) of £21,250 confirmed 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. The hearing was conducted via Microsoft Teams and the panel was satisfied that both parties were fully able to participate in the hearing.

4. The appeal was brought in respect of the entry in the rating list shown as 5 Gomond Street, Hereford, HR1 2DP (the subject property), a shop located in Hereford City centre. The proposal was submitted by the Appellant’s representative on 20 November 2019 to challenge the valuation in the compiled list. The challenge decision notice from the VO was dated 17 December 2020 and it reduced the RV from £29,750 to £21,250 with effect from 1 April 2017. The appeal against this decision was lodged with the Tribunal on 7 April 2021.

5. The antecedent valuation date (AVD) for all 2017 list rating appeals is 1 April 2015. As this appeal concerned a challenge to the compiled list entry, the material day was 1 April 2017.

6. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that the panel fully considered all the evidence presented before coming to a decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

Issue

7. The facts of the property and its measurements were not in dispute. An earlier dispute regarding air conditioning in the property had been resolved under the challenge decision.

8. The sole issue before the panel was the correct Zone A price to be applied for the subject property. Mr Bullimore sought a rate of £230/m^2, Mr Humes defended the existing rate of £320/m^2.

Evidence and submissions

9. Mr Bullimore had, in his appeal submission, declared that he was instructed on a conditional fee basis. However, he also declared that he understood and accepted that his duty is to the Tribunal in giving his evidence and he would comply with this, regardless of whether or not the evidence supports his client’s case.

10. 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 is allowable due to the Tribunal’s rules on admissibility of evidence (reg 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial). It therefore considered the “expert” evidence and assessed what weight it should give to it in the context of the matters in issue before it.

11. The evidence bundle provided comprised all of the documents exchanged between the parties as part of the challenge process, following the Appellant’s proposal to alter the entry in the 2017 rating list.

12. Mr Bullimore explained that Gomond Street is part of the Maylord Shopping Centre and, over the past eight years or so, there have been significant changes to the locality. He provided photographs and maps to illustrate that the opening of the new Old Market Shopping centre has affected pedestrian footfall in the area and resulted in many units in Gomond Street sitting empty for a number of years. He stated that, at the time of his submission, only three of the ten units on the street were occupied, including the subject property.

13. The subject property was let on 31 March 2015 for one year at £0 per annum to the Appellant. In 2017 it was let again on a five year lease at £25,000 per annum, with a landlord cash incentive of £25,000 and a break clause in the third year. Historically, the property had been occupied by the Appellant company for many years and was let from 1987 at £41,500. The rent reviews in 2002 and 2007 were £46,000 and £53,575 respectively. Mr Bullimore did not seek an RV of £0 but stated that those lease terms continued until the new five year lease was agreed in September 2017. On this basis he considered a Zone A price of £230/m^2 was not unreasonable and he asked the panel to reduce the RV to £15,500.

14. Mr Humes stated that all units in Gomond Street were valued at £450/m^2. The challenge decision had reduced the Zone A price for the subject property to £320/m^2 and he did not consider any further reduction was warranted. He confirmed that the Form of Return (FOR) held for the subject property confirmed the 2017 rent (although the cash incentive of £25,000 was not mentioned). Both parties had analysed this rent and arrived at different figures. Mr Bullimore's analysis produced £245/m^2 and he sought a Zone A price of £230/m^2. The VO's analysis from the FOR produced £388/m^2 but, after factoring in the £25,000 cash incentive, produced £298.40/m^2. The subject property's Zone A price was reduced on this basis to £320/m^2.

15. Mr Humes stated that the Appellant had been in a Company Voluntary Arrangement (CVA) for some time and the earlier rent set at £0 may reflect the company's financial difficulties at the time. He was therefore of the opinion that the £0 rent should not be taken in isolation and the property should be also valued by comparison with other similar retail units in the locality.

16. Mr Humes explained that he considered the best comparable properties were in nearby Maylord Street. He felt the units in this street were in a similar location in arterial streets leading to Trinity Square and Maylord Shopping Centre and provided examples of rents agreed close to the AVD. He asked the panel to confirm the existing RV for the subject property at £21,250, based on a Zone A price of £320/m^2.

Decision and reasons

17. In deciding this appeal, the panel was bound by the governing legislation. 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".*

18. In accordance with *Lotus and Delta Ltd v Culverwell (VO) and Leicester City Council* 1976 [RA 141], the panel found that the starting point must be any rent passing on the subject property at the AVD. Whilst it noted that there was a rent agreed at £0 the day before the AVD, the panel was aware that its task was to value the property and not the business in occupation. No evidence had been presented to support Mr Humes' statement that the Appellant had been in a CVA for some time, but the fact was not disputed by Mr Bullimore. The panel therefore found that the rent agreed at £0 should be treated with caution as it appeared out of line with other rents in the area and may reflect the financial position of the tenant rather than what the hypothetical tenant would bid on the vacant unit.

19. More useful was the rent agreed in 2017, although it was over two years after the AVD. The panel noted both parties' analysis of this rent but found that the adjustments required to reflect the cash incentive meant the rent was of limited value.

20. From the rental evidence table presented, the panel noted that the tone in Maylord Street ranged from £375/m^2 to £450/m^2. 13 Maylord Street had a rent renewal on 1 April 2015 for £19,000 and was valued at £375/m^2. The unit measured 51.10m in total, compared to the subject property at 207.15 so was smaller overall. 12 Maylord Street, larger than the subject property at 328.79m in total, was valued at £450/m^2 based on a lease renewal reduction in January 2015.

21. The panel placed most weight on the example of 19-21 Maylord Street, just over 12m smaller than the subject property overall, with a new lease agreed on 9 March 2016 at £19,993. This property had been the subject of a challenge and the RV agreed on the basis of £385/m^2.

22. After considering all the evidence presented, the panel placed little weight on the rents presented by Mr Bullimore from Commercial Street and High Town as it considered these to be a different type of location, being much busier main roads. It concluded that Maylord Street was a similar location to Gomond Street, which provided more reliable rental evidence than the leases agreed on the subject property. The basket of rental evidence in Maylord Street suggested that the current Zone A price applied to the subject property of £320/m^2 was not unreasonable. The other units in Gomond Street were still valued at £450/m^2 which further supported the VO's case to maintain the existing RV for the subject property.

23. In appeals of this nature, the burden lies with the Appellant to persuade the panel that his appeal should succeed. In this case, the panel was not persuaded that the rents agreed on the subject property provided the best evidence and the one year lease for £0 agreed just before the AVD was out of line with the tone in the area. The rents in Maylord Street provided a useful source of rents agreed close to the AVD and the existing Zone A rate for the subject property at £320/m^2 was lower than units in Maylord Street. The panel was satisfied that the current RV was correct, and the appeal was dismissed.

Date: 7 September 2021

Appeal number: CHG100143736