VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; challenge against compiled List entry; shop and premises; accuracy of rateable value; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal dismissed.

RE: 10 The Maltings, Uttoxeter ST14 7LN

APPEAL NUMBER: CHG100144782

BETWEEN:	MJ Barrett Group	Appellant
	and	
	Ms Bunyan (Valuation Officer)	Respondent

PANEL: Miss U Haque (Senior Member)
Miss L Westwell

CLERK: Miss F Willson

REMOTE HEARING ON: Monday 26 July 2021

APPEARANCES: Mr A Simons from Altus Group (on behalf of the Appellant)
Mr D Humes (on behalf of the Valuation Officer).

Summary of decision

1. Appeal dismissed. The current entry in the Rating List is confirmed as 10 The Maltings, Uttoxeter ST14 7LN with a rateable value (RV) of £8,000 from 1 April 2017.

Introduction

2. The appeal arises from a challenge made by the appellant's representative on 22 November 2019, in respect of 10 The Maltings, Uttoxeter ST14 7LN (the appeal property). The challenge was in respect of the entry in the rating list at £8,700 RV effective from 1 April 2017. The

appellant sought a revised assessment of £5,200 RV with effect from 1 April 2017. The Valuation Officer determined that the RV should be reduced to £8,000, based on a reduction to the zone A price from £180/m^2 to £165/m^2 and a decision notice to this effect was issued on 27 November 2020. The appellant made an appeal to this tribunal against the RV in the decision notice, which was received on 6 March 2021, on the grounds that the existing RV was not reasonable.

3. 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.

4. 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.

5. Mr Simons 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), Mr Simons stated that he was instructed under a conditional fee arrangement. He 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.

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6. The panel have accepted this expert witness evidence on the above basis as the appeal is 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 (regulation 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial). The panel therefore considered the "expert" evidence and attached such weight to it as it saw fit.

7. The appeal property is a shop and premises located in The Maltings, a shopping centre in Uttoxeter just off the High Street. There is an adjacent car park with 370 parking spaces and the shopping centre connects the car park with the High Street. The bus station is also adjacent. The appeal property is operated over the ground and first floor with a total area of the shop unit being 88.47m^2 with an area of 42.82m^2 ITMS. It is held on a freehold basis.

8. 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

9. The issue in dispute is the correct RV of the appeal property. The current entry in the list is £8,000 based on comparable properties. Mr Simons believes the RV should be £5,200 based on the rent passing on a comparable property.

Evidence and submissions

10. Mr Simons submitted a bundle of evidence which included details of the appeal property, relevant case law, the issues in dispute and photographs.

11. With reference to the appeal property, he asked the panel to confirm a revised assessment of £5,200 RV from 1 April 2017.

12. Mr Humes referred the panel to the challenge application and decision.

13. In consideration of his comparable properties admitted in evidence, Mr Humes asked the tribunal to confirm the RV of £8,000 with effect from 1 April 2017.

Decision and reasons

14. The appeal hereditament must be valued for the purpose of non-domestic rating on the basis of the rent at which it might reasonably be expected to let from year to year on a number of assumptions (see paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015 (antecedent valuation date or AVD). Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 (the material day) for this appeal. When assessing the RV of any property, rating law also requires that the property must be assumed to be 'vacant and to let', and in the state set out in Schedule 6, paragraph 2(7) of the Act, in relation to both the physical nature of the property and its mode or category of use.

15. Mr Simons and Mr Humes referred the panel to the case *of Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA141. In this case it was determined that where rental evidence is available, the weight to be attached should be considered in light of the following six propositions:

- Where the hereditament which is the subject of consideration is actually let, that rent should be taken as the starting basis.

- The more closely the circumstances under which the rent agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of gross value in section 19(6) of the General Rate Act 1967 the more weight should be attached to it. (These statutory requirements now contained in Schedule 6, Para 2 (1) Local Government Finance Act 1988 (as amended by the Rating (Valuation) Act 1999)).

- 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.

- 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 be properly be referred to as giving an indication of that opinion.

- In light of all the evidence an opinion can then be formed of the value of the appeal hereditament, the weight to be attached to the differing types of evidence depending on the one hand the nature of the actual rent and on the other hand, on the degree of comparability found in other properties.

- In those cases where there are no rents available of comparable properties a review of other assessments may be helpful but, in each circumstance, it would be difficult to reject the evidence of the actual rent.

16. Mr Simons submitted that the revised zone A price of £165/m^2 was excessive considering the shopping centre The Maltings was only 80% occupied and this had driven down the footfall. The landlord had the empty units advertised for let and had put forward a plan to increase the size of the units but had failed to find a tenant. The landlord had now put in planning permission for some of the area to be turned into a residential area with some office space instead of retail. In his opinion the landlord had actively marketed The Maltings but there had been no take up.

17. The panel was aware that low occupancy in a shopping centre would affect the demand from potential tenants. The number of empty shops should also be taken as at the material day 1 April 2017.

18. In Mr Simon's opinion, the fact that The Maltings was 80% empty should lead to a reduction in its RV as it had an effect on the values within the centre . He drew the panel's attention to other shopping centres which had received a reduction as a result of high levels of vacancies including Forest Court Shopping Centre, Royal Exchange Shopping Centre, Central Square Erdington, Marketgate in Wigan and Broadmarsh Shopping Centre which all received reductions of up to 50% in their RV's due to high vacancy rates.

19. Mr Humes submitted that the reductions applied in the shopping centres put into evidence by Mr Simons had all been determined on a case by case basis. He explained that some of these reductions were only temporary and there was not an automatic reduction in an RV based on the level of vacancy in a shopping centre.

20. The panel found that any such reduction required a specific reason particular to that shopping centre before being granted. It was not appropriate to grant such a reduction purely because some of the units in a shopping centre were temporarily vacant.

21. Mr Simons drew the panel's attention to the fact that the appeal property was freehold and there was no passing rent to use to establish a RV. In the case of *Lotus and Delta* the rent passing on the appeal property was only the starting point and the rents of other similar properties in the vicinity should be included in the basket of evidence. Mr Simons referred the panel to 42 High Street which was in his opinion a good comparable property to the appeal property. It had a double frontage onto the High Street and The Maltings unlike the appeal property. The rent was £8,688 per annum commencing in June 2015 within months of the AVD. It had a RV of £18,750 which is based on a zone A price of £240/m^2. The June 2015 rent analyses to a zone A price of £111.25/m^2.

22. Mr Simons further submitted that the zone A price of £165/m^2 applied to the appeal property was excessive when taking into account the analysis of the rent for 41 High Street which equated to £111.25/m^2. This comparable property also had the benefit of a double frontage.

To reflect all of the factors affecting the appeal property, he considered that an assessment based on a zone A price of £108/m^2 was more reasonable for the appeal property. He therefore proposed the following:

ITZA 42.82m^2 @ £108/m^2 zone A= £5,272 RV say £5,200.

23. The panel was aware that the *Lotus and Delta* case found that when there was no rent passing on the appeal property it was important to take into account the rents passing on similar properties with leases commencing as close to the AVD as possible. The panel found that Mr Simons was only submitting one comparable property and therefore put limited weight on this evidence.

24. Mr Simons argued that the development of Carters Square in May 2014 at the opposite end of Uttoxeter with a free car park had pulled the footfall to the other end of town. At Carters Square there was an Asda and a B & M Bargains which would draw shoppers to that end of the town and away from The Maltings and the appeal property.

25. Mr Humes referred the panel to the fact that The Maltings also had a car park next to it along with the bus station, both of which would increase footfall. Shoppers would walk through The Maltings to go to the High Street or Carters Square even if they were not heading specifically to it which would increase footfall.

26. The panel noted on the map that The Maltings did have a car park and bus station adjacent to it which could increase footfall through the shopping centre. There was however no evidence relating to footfall submitted by either party and so it was impossible to put much weight on this evidence as there was only the opinion of those presenting and no data to support it.

27. Mr Humes drew the panels attention to the fact that although the Carters Square development and its free car park would encourage shoppers to that side of Uttoxeter they could still use the car park to visit The Maltings. He stated that there was an Iceland in The Maltings which would equally encourage shoppers to visit The Maltings. He further submitted that the difference between the two areas was already taken into account with the zone A price of £165/m^2 for The Maltings and the zone A price for Carters Square being £300/m^2.

28. The panel found that the difference between the two locations and the shops at each had already been taken into account by the significantly higher zone A price for Carters Square. It put weight on this argument.

29. Mr Humes submitted that in his opinion the best comparable property to the appeal property was 28-30 The Maltings which was let on a ten year lease with effect from 1 January 2016, only months after the AVD. The rent was £15,000 per annum which analysed to £173.07/m^2. The property was close to the car park and had a return frontage and so Mr Humes submitted that a reduction of 5% from the £173.07/m^2 that this rent analysed to was appropriate for the appeal property which would give a price for zone A of £165/m^2 and an RV of £8,000.

30. The tenant of 28-30 The Maltings was already the tenant of 30 The Maltings but decided that they wanted the two units when the lease was renewed. Mr Humes argued that this showed the tenant had confidence in the footfall in The Maltings to stay on the same site and in fact take a second unit. Both sides had equal standing in the negotiations of the new leases. The tenant would be keen to stay as they had already built up trade at that site but equally the landlord would be motivated to keep a good tenant and even let an extra unit. He submitted

that this therefore qualified as an open market lease at arms length in accordance with the rating hypothesis and supported a zone A price of £165/m^2 for the appeal property.

31. The panel gave weight to this comparable property due to the tenancy and rent being an open market transaction and therefore fitting within the rating hypothesis. It therefore put weight on the passing rent supporting a zone A price of £165/m^2 for the appeal property.

32. Mr Humes referred the panel to the shops in the locality of the appeal property:

Address	Area m^2	Date of rent	Rent	Analysed rent	Adopted Value £/m^2	RV
28-30 the Maltings	172.71	1 Jan 2016	£15,000	£173.07	£165	£15,500
31 High Street	82.31	1 Jan 2014	£6,000	£174.10	£175	£5,700
33 High Street	200.90	1 Dec 2015	£15,000	£176.07	£175	£13,500
32 High Street	338.35	25 Mar 2014	£20,475	£279.52	£290	£25,750
25-27 High Street	178.13	25 Mar 2015	£16,000	£226.92	£250	£17,500

He submitted that they were all new lets apart from 32 and 25-27 High Street which were lease renewals. The rent of 28-30 The Maltings, 31 and 33 High Street, which are new lets, have rents that devalue to £173.07, £174.10 and £176.07 which support £165/m^2 on the appeal property. 32 High Street and 25-27 High Street devalue to £279.52 and £226.92 respectively and he submitted that this basket of evidence supports a zone A price of £165/m^2 as being reasonable for the appeal property.

33. He also drew the panel's attention to the fact that the rent of 32 High Street indicated that the rent on 42 High Street put forward by Mr Simons was an outlier. The agreement in connection with 42 High Street was not on the open market and was either a licence or an agreement and so he submitted that the panel should not put any weight on this as a comparable property. He argued that these comparable properties demonstrated that a zone A price of £165/m^2 for the appeal property was not excessive.

34. The panel put weight on the comparable properties particularly 28-30 The Maltings which supported the zone A price of £165/m^2 for the appeal property.

35. Mr Humes submitted that the high vacancy rate in The Maltings could be due to a physical cause in the locality or as a result of the landlord creating an artificial environment ready for the intended redevelopment. The landlord had not offered any incentives on the empty units to draw in new tenants and the asking rent on 13 and 25 The Maltings did not reflect any fall in value for the units in The Maltings.

36. Having considered both parties' evidence and analysis, the panel was not persuaded that the zone A price of £165/m^2 applied in the appeal property's assessment was excessive. The panel put weight on the difference with the zone A price between The Maltings and Carters Square. This was supported by the passing rent on 28-30 The Maltings. The panel held that

the existing assessment was reasonable, and the RV was confirmed at £8,000 from 1 April 2017.

37. In cases of this nature, it is for the appellant to demonstrate that the RV is unreasonable, and the panel found that in this case the appellant had not done so.

38. The appeal is therefore dismissed.

Date: 9 August 2021

Appeal number: CHG100144782