VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; Challenge against Compiled List entry; Shop and Premises; accuracy of rateable value; rental and comparable evidence considered; found that weight of evidence did not support a reduction in the assessment of subject property; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141. Decision: Dismissed.

RE: 17-19 Low Pavement and 58 Bridlesmith Gate, Nottingham, NG1 2GP
APPEAL NUMBER: CHG100145900

BETWEEN:	Four Marketing Ltd (Represented by Altus Group)	Appellant
	and	
	Joanne Moore (Valuation Officer)	Respondent

PANEL:	Mrs N Yang (Senior Member) Mrs C Parkes
REMOTE HEARING:	22 September 2021
CLERK:	Mr J N Massey
APPEARANCES:	Mr A Simons of Altus Group for the Appellant. Mrs P Bailey for the Valuation Officer.

Summary of decision

1. Appeal dismissed. The panel considered that the existing entry in the Rating List for the appeal property of Rateable Value (RV) £165,000 was not excessive.

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.

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

5. This was a 2017 Rating List appeal. 17-19 Low Pavement and 58 Bridlesmith Gate, Nottingham, NG1 2GP ("the appeal property") had been entered in the 2017 rating list as 'Shop and Premises' at a RV of £165,000 with effect from 1 April 2017

6. The challenge proposal was submitted by Altus Group on behalf of Four Marketing Ltd and was received by the Valuation Officer on 27 November 2019. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was wrong. A revised RV of £121,500 was proposed with effect from 1 April 2017.

7. The Valuation Officer issued a challenge case decision notice on 14 January 2021, which stated that based upon the evidence and information available, the rating list entry of £165,000 RV was considered to be reasonable and there would be no amendment.

8. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal has been made on the grounds that the valuation for the hereditament is not reasonable. The appeal was received by the Tribunal on 14 May 2021.

9. Mr Simons appeared on behalf of the Appellant as both surveyor-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' declaration of truth included a statement that he was instructed on a contingency fee basis. 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 the 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 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). The panel therefore considered the expert evidence and attached such weight to it as it saw fit.

11. The appeal hereditament comprises a shop situated on the corner of Bridlesmith Gate and Low Pavement, a pedestrianised retail street in Nottingham City Centre. There are retail areas on the ground and first floors, with storage areas on the basement, second and third floors. The survey details and area of the subject property are agreed by the parties at 429.77m^2.

12. This document is not intended as a verbatim report of the proceedings nor is it proposed to reproduce in full all of the parties' evidence. The absence in this decision of a reference to any statement or item of evidence placed before it by the parties should not be construed as an indication that that statement or item of evidence has been overlooked by the panel.

Issue

13. The issue between the parties concerned the RV of the appeal property and specifically, the rate per m² that should apply. Mr Simon, for the Appellant, sought a reduction to £121,500 RV based on a Zone A rate of £1,175 per m². Mrs Bailey, for the VO, sought to defend the existing RV of £165,000 which was based on the existing Zone A price of £1,600 per m².

Evidence and Submissions

14. In his challenge and appeal, Mr Simons had given details of the rent passing on the subject property, which was £125,000 per annum (pa) effective from 9 November 2015 on a new lease expiring on 23 February 2022. Taking the three-month rent-free period as an incentive resulted in a net rent of £118,750 pa which he had analysed to £1,175 per m^2 (Zone A) which he argued indicated that the adopted rate of £1,600.00 per m^2 is excessive and should be reduced.

15. In line with the decision in *Lotus and Delta v Culverwell (VO) [1976] RA 141* Mr Simons suggested that the rent on the subject property should be taken as a starting point, and the rent of comparable properties in the locality should also be given weight. The basket of evidence, which included the rent on the subject property, and the rent on two comparable properties, was in his opinion, indicative of a Zone A rate of £1,175.00 per m^2 for the subject property.

16. Mr Simons had provided details of rents for two shops on Bridlesmith Gate which he considered to be in stronger positions on the street than the subject property and had accordingly been assessed at £1,900 per m^2. 32 Bridlesmith Gate was let on a new lease for 10 years from 27 October 2017 at a stepped rent rising from £30,000 pa in the first year to £70,000 pa in the fourth year with one month's rent free. He had calculated a net rent of £57,000 pa which he had analysed to £1,085 per m^2. 30 Bridlesmith Gate was let on a new lease from 14 August 2015 at a rent of £32,000 for the first year and £65,000 pa for years 2 to 5. He had calculated a net rent of £58,400 pa which he had analysed to a zone A rate of £1,500 per m^2. Although he noted that the VO had recently reduced the adopted rate of 32 Bridlesmith Gate to £1700 per m^2, he argued that the analysed rents for 32 Bridlesmith Gate and 30 Bridlesmith Gate were some 36% and 22% lower than their respective adopted zone A rates.

17. Ms Bailey presented the case for the VO. She referred to the lease on subject property being an underlease which stated that there was an initial rent of £125,000 pa but did not specify whether this rent remained the same or was stepped for the remainder of the lease. Mr Simons confirmed that the rent of £125,000 pa stayed the same until the rent review on 27 February 2017 when it remained unchanged. He was not aware whether that review had not been actioned, or if the rent had been agreed at nil increase. Ms Bailey stated that a copy of the superior lease had been requested from the Appellant but had not been forthcoming. In the absence of the superior lease, she referred to information on Costar which states that the superior lease for the subject property was signed in March 2012 for a ten-year term at a rent of £180,000 pa with a three month rent-free period. She argued that

the full terms of the underlease could not be determined without reference to the superior lease and therefore the rent of £125,000 pa was not reliable and should be given less weight.

18. Ms Bailey stated that there was no rental evidence close to the AVD, and referred to rents agreed on comparable properties in 2013 and 2014, analysis of which had resulted in Zone A rates ranging from £1,766 to £2,344 per m^2. She stated that there had been no challenges to the tone on units in Bridlesmith Gate from 1 April 2017, which she argued indicated that the Zone A rate was not unreasonable.

19. She referred to two challenges on 51 Bridlesmith Gate, which had been settled by way of agreement, and resulted in a 10% reduction effective from 10 July 2017 and a further 5% reduction effective from 21 January 2019 which would also be applied to the subject property. These reductions related to MCC events which occurred after the material day for this appeal, but she stated that whilst the tone had been discussed in these challenges with the agent for 51 Bridlesmith Gate, it had not been challenged.

Decision and reasons

20. 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;
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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".

21. In respect of an appeal against an entry in the 2017 rating list, the rental levels are to be taken as those passing at the antecedent valuation date (AVD) of 1 April 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841).

22. The material day (the date by which physical factors have to be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject appeal, the material day is 1 April 2017.

23. Both parties had referred *to Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141*. This Lands Tribunal judgment provided authoritative guidance on the

weight to be attached to rental and assessment evidence. The rent on the subject property was considered to be the correct starting point but, where available, rents on similar properties were also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.

24. Bearing in mind the lack of information regarding the terms of the superior lease for the subject property, which would have been binding of the tenant to some extent and had not been forthcoming, the panel found that the rent of £125,000 on the subject property was not reliable and should be given little weight in determining its correct RV.

25. Mrs Bailey had provided details of ten comparable retail properties in Bridlesmith Gate to support the existing rate for the subject property.

Address	Total Area m^2	RV	Date of rent	Adopted value (ZA) $/m^2$	Analysed rent (ZA) $/m^2$(VO)
17-19 Low Pavement and 58 Bridlesmith Gate (Subject property)	429.77	£165,000	1/11/15	£1,600	£1191 £1125 (App)
45-47 Bridlesmith Gate	162.50	£83,000	24/6/13	£1,600	£1824.33
43 Bridlesmith Gate	132.37	£86,500	30/10/13	£1,600	£1,766.46
11 Bridlesmith Gate	120.10	£89,500	4/11/13	£1,900	£2,103.47
51 Bridlesmith Gate	125.50	£74,500	20/1/14	£1,600	£1,719.69
26-28 Bridlesmith Gate	502.82	£218,000	29/9/14	£1,900	£2,320.65
25 Bridlesmith Gate	301.20	£175,000	12/10/14	£1,900	£2,344.60
48-50 Bridlesmith Gate	154.60	£94,500	1/5/15	£1,600	£2,050.57
34-36 Bridlesmith Gate	1022.95	£342,500	24/6/15	£1,900	£2,174.40
30 Bridlesmith Gate	218.07	£74,000	1/5/15	£1,900	£1,530.49 £1,500 (App)
54-56 Bridlesmith Gate	285.90	£104,000	1/11/18	£1,600	£1,436.05

26. Whilst the analysed rent of £1500 per m^2 on 30 Bridlesmith Gate would appear to support a reduction, this was low compared to that of all of the VO's other comparable properties. The rents of those properties with an adopted value of £1,600 per m^2 were analysed to between £1,436.05 and £2,050.57 and the panel considered that this indicated that the adopted rate for the subject property of £1,600 was not unreasonable.

27. Mr Simons had referred to the fact that the majority of the VO's comparable rents were agreed on rent reviews, which were upwards only, and therefore did not reflect open market rents at the time they were agreed. Mrs Bailey stated that the rents for 45-47 Bridlesmith Gate and 25 Bridlesmith Gate were increased on review, which she argued was reflective of market rents increasing at the time of the review, whereas a nil increase would indicate that rents were either static or falling at the date of a review. The panel noted that 51,48-50 and 34-36 Bridlesmith Gate had not had an increase when their rents were reviewed, and there was no information on the previous rent for 26-28 Bridlesmith Gate. Having considered this evidence, the panel was of the opinion that the rent agreed for 45-47 Bridlesmith Gate was 18 months before the AVD, whereas 25 Bridlesmith Gate was agreed less than six months before the AVD, and therefore most weight should be given to the rent agreed for 25 Bridlesmith Gate in determining whether the current adopted rate for the subject property was correct.

28. The panel noted that 11 Bridlesmith Gate and 54-56 Bridlesmith Gate were new lettings. It considered that these would reflect the rents prevailing at the dates they were agreed. 11 Bridlesmith Gate was valued at an adopted rate of £1,900 per m^2 to reflect its superior position on the street, and the rent agreed 17 months before the AVD was analysed at £2,103 per m^2 by the VO.

29. The rent for 54-56 Bridlesmith Gate had been agreed on a new letting from 1 November 2018 and analysed to £1,436.05 per m^2. Whilst this rent was, in the panel's opinion, too far removed from the AVD to provide an indication of rents prevailing at that date, it was agreed at around the same time as the effective date of the 2nd MCC event agreed for 51 Bridlesmith Gate but effecting the whole street. The panel was of the opinion that this rent agreed would have factored in the 15% reduction due to the two MCCs, which indicated that the tone of £1,600 per m^2 was not excessive.

30. Having considered both parties' rental evidence and analysis for properties in the locality, the panel concluded that the unadjusted rate of £1,600 adopted by the Respondent was supported by the basket of rental evidence and was fair reasonable. The appeal is therefore dismissed.

Date: 19 October 2021
Appeal number: CHG100145900