THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; Shop and Premises; accuracy of rateable value in list; rental and comparable evidence considered; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141. Decision: Appeal allowed in part.

RE: Gnd Fl 3, Market Street, Torquay, TQ1 3AA

APPEAL NUMBER: CHG1000149367

BETWEEN:	David McCabe	Appellant
and	Dal S Virk (Valuation Officer)	Respondent

PANEL: Mrs X Holt (Senior Member)
Mrs V Hollender

CLERK: Mr D Jefferies

REMOTE HEARING ON: 24 August 2021

APPEARANCES: Mr D McCabe (Appellant)
Mr S Lewis for the Valuation Officer

Summary of decision

1. The appeal was allowed in part. The rateable value (RV) of Gnd Fl 3, Market Street, Torquay, TQ1 3AA, was reduced to £12,250, with effect 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.
4. The appeal before the panel was a 2017 Rating List appeal. The Rateable Value (RV) of the appeal hereditament was originally £14,750 from 1 April 2017, with a description of Shop and Premises. This was a compiled list appeal, so the material day was also 1 April 2017. At the challenge stage the Valuation Office Agency (VOA) reduced the RV to £14,250 and altered the rating list with effect from 1 April 2017. The appeal was made on 20 April 2021 against the Valuation Officer’s (VO) Decision Notice of 22 December 2020 in respect of the appeal property and the RV of £14,250. The VO’s decision was to treat the appellant’s proposal as not well founded and the entry of £14,250 RV was deemed as correct. The proposed RV sought by the appellant was £8,000.

5. The subject property is a retail shop on the ground floor in a parade of retail units with two unrelated domestic flats above which have separate entrances. The unit is zoned for valuation purposes, as are other retail units in this area. There are separate lines in the valuation for Zone B and Zone C as these areas have been given a 5% reduction in value because of the effects of masking.

6. The current RV is £14,250 with effect from 1 April 2017. This is calculated with the primary Zone A rate of £290/m^2. There is also an addition of £149 for a CCTV camera system which is rateable Plant and Machinery.

7. 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 the panel by the parties should not be construed as an indication that that statement or item of evidence has been overlooked.

Issue

8. The issue between the parties concerned the RV of the appeal property. Mr McCabe sought a reduction to £8,000 RV. Mr Lewis, for the VO, defended the existing RV of £14,250, which was based on a Zone A rate of £290/m^2, having been reduced from £300/m^2, and sought dismissal of the appeal.

9. All relevant factual information was not disputed by the parties.

Evidence and submissions

10. The evidence from the parties included rental evidence in respect of the appeal property and properties cited as comparable, valuations, comparable assessments, lease summary and rateable value definition.

11. Some of Mr Lewis’ evidence did not appear in the evidence pack provided to the Tribunal members and clerk. However, the missing schedule of comparable rental evidence and a map

identifying the subject property in relation to the comparable properties were circulated during the hearing.

Decision and reasons

12. 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 of 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 (material day) for this appeal.

13. Mr McCabe argued that the VO had chosen to ignore the rental evidence submitted for the appeal property for lettings achieved both before and after the AVD of 1 April 2015. Instead, he said the VO has chosen to use a property (10 Victoria Parade), which is located on the other side of the town, in the upmarket and far more fashionable and expensive harbourside area, to use as a comparable property in an attempt to justify the excessively high RV that the VO has fixed for the appeal property. Mr McCabe believed that the lettings achieved for the appeal property for Subway and Ramin Babaelikouros between 2013 (£10,000) and 2019 (£8,000) shows a downward trend in rental values and clearly show that the RV should be somewhere in the order of £8,000 to £10,000, but most definitely not £14,250.

14. Mr Lewis said that the appellant has provided two rents for the subject property as evidence to suggest it is overvalued. However, he said that the subject rent should be the starting point when considering this Challenge and how it reflects the statutory basis. He referred to the two steps as suggested in the rating case law *Lotus and Delta v Culverwell (VO) & Leicester City Council* [1976] RA 141:

   "i) Where the hereditament which is the subject of consideration is actually let that rent should be taken as a starting point
   ii) The more closely the circumstances under which the rent is agreed as to time, subject matter and conditions related to the statutory requirements contained in the definition of rateable value the more weight should be attached to it."

15. It was established at the hearing by Mr McCabe that the 2013 rent to Subway of £10,000 was a surrender and renewal of the existing lease. Mr Lewis asserted that this evidence does not therefore carry as much weight as a new lease. This £10,000 rent calculates to a Zone A price of £203.13/m^2. Furthermore, he said that this rent is 19 months before the AVD of 1 April 2015.

16. Mr Lewis said that the VO has little information on the 2019 rent of £8,000 on the subject property, only one unsigned page, meaning much of the lease information is not available. He said that it is unclear if there are any incentives involved or if the lease is contracted out of the Landlord and Tenant Act 1954 Act, if it is full repairs and insurance. However, he said this subsequent rent is 4 years 9 months after AVD on 3 December 2019 - a radically different retail market. He referred to the guidance of the rating case law of *Garton v Hunter (VO)* (1969) which established that all evidence is admissible but goes to weight, and not admissibility. Therefore, since the later rent is so long after the AVD he considered it carried little weight as evidence. He said the £8,000 rent calculates to £162.47/m^2 Zone A.

17. Mr Lewis said that looking at rental evidence of other retail properties in Torquay he had considered the third step as outlined in *Lotus and Delta*:

"iii) Where rents of similar properties are available, they too are properly to be 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 hereditament."

18. Mr Lewis had provided the panel with a rental summary which showed the evidence he was using in order to demonstrate that a reduction in the £/m^2 had been warranted. He referred to four rents – all new lettings in Torquay for retail properties in the range of £280.84/m^2 to £345.75/m^2. In his opinion, the best evidence was the rent of 10 Victoria Parade which is closest to AVD on 1 August 2014 at £293.55/m^2. Taking this information and weighing it in a basket of rents Mr Lewis considered that the reduction from £300/m^2 to £290/m^2 Zone A for the appeal property was fair and reasonable. This had resulted in a RV of £14,250 with effect from 1 April 2017, and he sought dismissal of the appeal.

19. The panel accepted that the rent passing on the appeal property was the appropriate starting point, in accordance with the propositions for weighing evidence established in the Lands Tribunal decision in *Lotus and Delta*. The RV represents the rent that the premises would have likely achieved on the open market at the AVD of 1 April 2015. *Lotus and Delta* also established that assessments of comparable properties were relevant and that an opinion of the value of the appeal property should be reached in the light of all of the evidence, weighed appropriately.

20. The 2013 rent to Subway of £10,000 was a surrender and renewal of the existing lease. Mr Lewis had asserted that this evidence does not therefore carry as much weight as a new lease. The panel noted that this rent calculates to a Zone A price of £203.13/m^2. However, this rent is 19 months before the AVD of 1 April 2015. The panel did dwell on Mr McCabe's submission, however, it found that it could only attach moderate weight to this agreement as it was not a new rental agreement made on the open market. Furthermore, no lease had been provided to support Mr McCabe's argument. In relation to the 2019 rent of £8,000 on the appeal property the panel accepted Mr Lewis' argument that since the later rent is so long after the AVD it carried little weight as evidence.

21. In reaching its decision, the panel had regard to the other rental evidence available, and it found that this somewhat supported Mr McCabe's case. The panel noted that 10 Victoria Parade was situated half a mile away on the other side of the town, in the upmarket and far more fashionable and expensive harbourside area and it accepted Mr McCabe's contention that this property was not comparable in terms of its superior location. Numbers 26 and 37a Torwood Street were also situated close to the harbourside and the panel found that these properties were also not comparable to the appeal property due to its inferior location, which Mr McCabe described as being situated in a quiet side street in Torquay.

22. The closest of the VO's comparable properties was that of 11 Union Square. This property had been valued to a Zone A price of £275/m^2. Mr McCabe described 11 Union Square as being in the prime retail pitch of Torquay, whereas his property, 3 Market Street, is located in a side street and therefore not comparable. Having carefully looked at the 'basket of rents' and considered the comparable properties cited by the VO, the panel has accepted Mr McCabe's argument that the value of 3 Market Street at a Zone A rate of £290/m^2 was too high, but the panel was not satisfied that Mr McCabe has proved that the passing rent of £10,000, which calculates to a Zone A price of £203.13/m^2 was justified in this case. The panel has taken the view that the appropriate value, which reflects the appeal property's inferior trading location, would be at a Zone A rate of £250/m^2.

23. In conclusion, having considered all of the evidence, the panel found that it was inappropriate to rely only on the rental evidence of the appeal property for the reasons already given. Having

regard to the physical state of the appeal property and its locality at the material date of 1 April 2017, and the evidence referred to, the panel is of the opinion that the revised price of £250/m^2 Zone A is fair and reasonable. This yields a RV of £12,456, rounded down to £12,250, which the panel directs with effect from 1 April 2017. The appeal is allowed to that extent.

Order

24. Under the provisions of Regulation 38 (4) and (9) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 the VTE orders the Valuation Officer to alter the List within two weeks of the date of this order to show Gnd Fl 3, Market Street, Torquay, TQ1 3AA, at a Rateable Value of £12,250 with effect from 1 April 2017.

25. If the appeal was successful (either in part or full) 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: 17 September 2021

Appeal number: CHG1000149367