THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 list appeal; Hairdressing Salon; The Valuation for the hereditament is not reasonable; Rental evidence; Base rate £m^2; Tone and comparable properties; Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141; Appeal part allowed.

Re: Hunter and Walsh Hairdressing, 27B Market Place, Penzance, Cornwall TR18 2JD

APPEAL NUMBER: CHG100150740

BETWEEN:	David McCabe	Appellant
	and	
	Ms Dawn Bunyan (The Valuation Officer)	Respondent

PANEL:	Mr Raveen Patel	(Chair)
	Ms Naomi Chesterman	(Member)

CLERK:	Mr Duncan Adamson IRRV (Hons)	
REMOTE HEARING 3:	23 November 2021	
PARTIES PRESENT:	Mr David McCabe	Appellant
	Mr Andrew Murdoch	On behalf of the respondent Valuation Officer as both advocate and expert witness.

Summary of decision

1. The appeal was part allowed and the Rateable Value reduced from £29,000 to £26,250 with effect from 24 June 2017.

Introduction

2. This appeal was brought by Mr McCabe in respect of Hunter and Walsh Hairdressing of 27B, Market Place, Penzance, Cornwall, a hairdressing salon with a total area of 117.5m^2.

3. At the check date of 2 December 2019 the property had a rateable value (RV) of £29,500. This was reduced to £29,000 by the Valuation Officer (VO) as air conditioning had been

removed from the premises with effect from 24 June 2017. The RV included a reduction of 5% reflecting shared access to the property.

4. The challenge submission date was 17 December 2019 with the challenge being completed on 19 February 2021.

5. The appellant sought a reduction of the rateable value from £29,000 to £15,000. The property was sublet to Hunter and Walsh at £15,000 per annum for the ground floor and £5,000 for the basement as detailed in the lease agreement dated 10 May 2012. It had been marketed to let since Hunter and Walsh vacated in June 2017 but there had been no interest.

6. This formed the basis of the appellant's challenge in that the business rates were too high and should be reduced to £15,000 for the ground floor which would be in line with the passing rent.

7. The VO had initially proposed a reduction of the RV to £25,000 using a Zone A rate from a neighbouring property but this was rejected by the appellant and subsequently withdrawn by the VO.

8. On 4 November 2021 the respondent VO had offered the appellant a revised valuation of the appeal property at an RV of £26,250 based on a rate of £400/m^2. The appellant rejected that revised offer.

9. 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.

10. 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.

11. 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 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

12. The rateable value of the appeal property.

Evidence and submissions

13. The evidence bundle comprised all of the documents exchanged between the parties as part of the challenge process: Valuation Officer's challenge case decision notice; appellant's

challenge submission; photographs and location plans of the appeal property and comparable property assessments.

14. The respondent stated that the rent on the appeal property was agreed on 10 May 2012 and so was too far removed from the Antecedent Valuation Date (AVD) of the 1 April 2015 to be of use in the valuation of the appeal property. He submitted rents for other properties in the vicinity of the appeal property as evidence of local rental values.

15. Further, that the RV of £29,000 was based on a rate of £440/m^2 In Terms of Zone A (ITZA) and that this was uniform for this parade of shops.

16. However, he also made reference to a parade of commercial premises set back from the road on the other side of the appeal property and one of these was 6 Greenmarket. It is assessed at a lower base rate of £380/m^2 ITZA. The respondent considered that although the appeal property possesses a good return display window directed towards the prime area, it is positioned to the far side of 27A Market Place and so is further away from the rest of Market Place and the head of Market Street.

17. In his opinion, therefore, a rate of £400/m2 ITZA would be more appropriate for the appeal property and this would reduce the rateable value to £26,250. This would be effective from 24 June 2017.

18. The appellant stated that the ground floor rateable value should reflect its rental value of £15,000. The lease agreement had been for a stepped rent:

1st year	2012	£7,500
2nd year	2013	£15,000
3rd year	2014	£20,000

The 2014 rent was the actual rent for the whole of the property but only £15,000 of which was for the main premises. As the actual rent became due ten months before the AVD (i.e. 10 May 2014) it was a valid basis for the appeal property valuation.

19. The appellant stated that, in his opinion, the reason the premises had been empty for nearly four years was that the business rates were so high that tenants were put off from letting the property even when the rent was reduced as an offset. Further, that the premises were larger than other properties in the vicinity and this meant that they were more difficult to let.

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 –
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> 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".

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 24 June 2017.

23. The panel noted the respondent's reference 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. The panel was presented with a schedule of properties in the vicinity of the appeal property demonstrating that, generally, £440/m^2 was the normal base rate for assessment in this locality:

Address	Area m^2	ITMS	Base Rate/m^2	RV
27B Market Place	117.75	65.94	£440	£29,000
27A Market Place	145.5	46.04	£440	£20,250
27 Market Place	35.6	34.83	£440	£15,250
25-26 Market Place	205.4	93.2	£440	£41,000
23-24 Market Place	187.4	91.76	£440	£41,500
22 Market Place	299.6	81.97	£440	£37,000
6 Green Market	92.36	42.2	£380	£16,000

25. Further, the panel was presented with rental evidence of comparable properties in the locality of the appeal property:

Address	Date of Rent	Rent	Adjusted rent	Analysed rent	RV
27B Market Place	1 May 2012	£6,667	£14,407	£218.49	£29,000
27A Market Place	23 January 2015	£20,500	£20,500	£445.25	£20,250
6 Greenmarket	1 December 2015	£17,500	£17,500	£414.69	£16,000

Lloyds Bank, Market Place	30 November 2015	£81,000	£81,000	£835.48	£41,500

26. 27A Market Place had rental details from a lease renewal only 3 months prior to the AVD and, with an analysed rent of £445.25, the panel found that this supports the adopted base rate value of £440/m^2.

27. 6 Greenmarket and Lloyds Bank analyse at £414.89 and £835.48 and, again, the panel found that this supported the base rate used to value them. The panel therefore found that this supported the tone of rents within the locality.

28. The panel noted the uniformity of the use of the base rate of £440/m^2 but also the use of a lower base rate where there were disadvantages due to location and positioning e.g. for the property at 6 Green Market.

29. The panel found that the appeal property also had some disadvantages in its positioning and therefore this was good supporting evidence that the base rate should be less than that used for the current valuation of the appeal property.

30. The panel found that a base rate of £400/m^2 was most appropriate and that the respondents revised proposed RV of £26,250 should be the current valuation.

31. The panel noted that for the appeal property to have an RV of £15,000 it would need to be valued at a base rate of £227/m^2 but no evidence had been given to the panel to support such a valuation. The lease agreement of 2012 was too far removed from the AVD to be of value in the assessment and the panel placed little weight on it. However, the comparable rental evidence that had been submitted provided good evidence of the passing rent for these types of properties in this locality.

32. In appeals of this nature the burden of proof rests on the appellant to prove his case. The panel concluded that there was evidence for a reduction but the appellant had not produced sufficient evidence to justify a reduction to £15,000.

33. The appeal was therefore part allowed.

Order

34. The Tribunal orders, pursuant to Regulation 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, S.I. No. 2269 2009, that the Valuation Officer, within two weeks of the date of this order, shall alter the rateable value in the 2017 list in respect of 27B Market Place, Penzance, Cornwall TR18 2JD to £26,250 with effect from 24 June 2017.

35. 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: 5 January 2022

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