THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; compiled list appeal; shop and premises; areas; level of value; end allowance; rental evidence; comparable properties; appeal allowed in part.

RE: 105/123 London Road, Liverpool L3 8HR

APPEAL NUMBER: CHG100156348

BETWEEN:	LHR Holdings Ltd	Appellant
	and	
	Ms A Hitchings	Respondent
	(Valuation Officer)	

PANEL: Dr J Johnson (Presiding Senior Member)

Mr J Rogers (Senior Member)

CLERK: Mrs S Morgan

REMOTE HEARING: Monday 14 November 2022

PARTIES PRESENT: Mr P Rabbette – Appellant's representative

Mr T Dingle – Valuation Officer's representative

Summary of decision

1. The appeal was allowed in part. The appeal property's current assessment was reduced to £365,000 rateable value (RV) with effect from 1 April 2017.

Introduction

2. This is a 2017 Rating List appeal, and the RV of the appeal hereditament was £387,500 with effect from 1 April 2017. The appellant's representative sought a reduction to £170,000 RV.

3. The challenge submission was received on 17 January 2020. The grounds for the challenge disputed the accuracy of the RV in the Rating List on 1 April 2017.

4. Mr Rabbette appeared on behalf of the appellant as an expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson* (VO*)* [2018] UKUT 0253 (LC), Mr Rabbette' s declaration of truth included him complying with his duty as an expert witness to the Valuation Tribunal which overrides any duty to those instructing or paying him and that 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.

5. The panel accepted this expert witness evidence on the above basis as the parties agreed the appeal was not complex and to do otherwise would be contrary to regulation 3 (Discharge of Valuation Tribunal for England (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).

6. This appeal was listed to be heard on 5 September 2022. Both parties were present on that occasion. The tribunal was informed that an inspection had taken place on 20 August 2022 in order to agree the areas of the subject property. Mr Dingle had stated that the subject property was a large complex building and that part of the subject property had now been demolished. He requested extra time to update his records with the correct measurements and areas. Mr Rabbette had no objections, and the case was adjourned.

7. It should be noted that at this hearing the areas were still not agreed.

8. This tribunal decision document is not and does not purport to be a verbatim record of proceedings. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

Issues

9. The areas for the appeal property were disputed. The appellant's representative contended that after visiting the site, the overall area was 16,075.26m^2. The respondent provided the areas from the existing Valuation Office Agency (VOA) survey of 19,412.4m^2 and then areas calculated from the CAD/OS plans of 19,249.8m^2. The area agreed for the 2010 IPP was

19,481m^2. However, during the hearing, the respondent based his revised assessment on 18,313m^2.

10. The appellant's representative contended that the unadjusted main space rate adopted in the assessment was excessive. He sought a reduction to £15.00/m^2. The appellant's representative added that the upper floors of Hughes House were in poor condition and as such, he had placed no value on these floors. The respondent contended that £20.00/m^2 was reasonable for the full range of floors.

11. In relation to an end allowance, the appellant's representative sought a 20% for split site whilst the respondent believed that no allowance was warranted for this issue.

Evidence and submissions

12. The bundle comprised all of the documents exchanged between the parties as part of the challenge process. This included: the challenge document and supporting evidence; the Valuation Officer's initial response; email exchanges during the challenge process; comparable properties; rental evidence; location and site plans; photographs of the appeal property and comparable properties; and the definition of rateable value and case law.

13. The appeal property was described as being an unusually large Victorian department store which consisted of two buildings (Hughes House and Audley House) separated by Stafford Street. The two sites were linked by a bridge and a tunnel. The property was situated on the London Road on the edge of Liverpool City Centre. It had been valued using the overall method. It was part of valuation scheme 428926 which covered base rates from £19.50/m^2 to £435.00/m^2. The appeal property sat at the bottom of this range of values at £20.00/m^2.

14. At the previous hearing in September 2022, the panel found that the areas were so far apart that the parties needed to come to some agreement before the next hearing. However, this did not happen. The respondent had stated that the areas had been agreed with another representative on the 2010 list. The appellant's representative stated that he had approached this fresh to the scene and remeasured the property from scratch on 10 July 2019. Both parties believed that their calculations were correct.

15. There were two leases, one for each building. The smaller building was Hughes House which provided accommodation from basement to second floor. It has been redeveloped but is included for the purposes of this challenge as at 1 April 2017. The larger building was Audley House and its accommodation ranges from basement to third floor. The lease for Audley House was dated 28 November 2012 at a rent of £400,000 pa, stepped for 4 years, and increasing by £50,000 pa. The lease for Hughes House was the same date at an annual rent of £1 pa. Only part of the basement was included in the lease for Hughes House.

16. The appellant's representative contended that there were a number of derelict areas in Hughes House, which were incapable of beneficial occupation and as such should have a nil value attached to them.

17. In support of his case for £15.00/m^2, the appellant's representative referred to four older, more dated comparable properties situated in locations in different parts of the country. He described each one and their location. The properties were as follows.

JT Morgan, Belle Vue Way, Swansea – 3,751,86m^2 @ £24.19m^2 = say £90,500 RV. The level of value has since been reduced to £10.00m^2 = £37,500 RV.

Debenhams PLC, Queens Buildings, Southampton – 25,964.4m^2 @ £13.50m^2 = say £350,000 RV.

Randall's, 6 Vine Street, Uxbridge – 2,503.47m^2 @ £18,00m^2 = say £45,000 RV.

Wilko, 20 Tanners Walk, Broadmarsh Shopping Centre, Nottingham - 4,231m^2 @ £18.50m^2 = say £38,000 RV.

18. The appellant's representative also referred to a number of department stores that once traded in Liverpool City Centre where none of them remained in the format they were as department stores. The appeal property remained a traditional department store, but its location and the quality of the building was poor. He believed that £15.00/m^2 was fair and reasonable.

19. In response, the respondent stated that for this challenge he was looking at the antecedent valuation date (AVD) of 1 April 2015 and the physical state of the property and its surroundings as at 1 April 2017. The headline rent based on the VOA's areas for Audley House, would give £30.00/m^2 but in considering this as a stepped rent using a rate of 6.5%, the rent devalued to £34.56/m^2. However, the areas were not agreed and by taking the appellant representative's areas it would give a headline rent of £34.33/m^2 and £39.95/m^2 as an equated figure. The rent did not suggest that the value would be lower than £20.00/m^2. All floors had been valued the same which reflected the layout issues and that the appeal property was in a reasonable state of repair.

20. In support of his case that £20.00/m^2 was reasonable, the respondent referred to other comparable rental evidence.

Beacon Bed World, 129-139 London Road Liverpool – valued as zoned £54.48/m^2 overall = £46,000 RV. The Form of Return gives a rent passing of £38,000 with effect from 1 December 2015 as a review. The lease states shared repairing liability and then adjusts 5% for each.

Ex B & M 145/163 London Road, Liverpool (since closed) – 1,246m^2 @ £80.00/m^2 = £98.500 RV. Stepped rent agreed in 2010, 4 years @ £35,000 pa then 6 year @ £70.000 pa.

F W Woolworth & Co Ltd, 12-14 Campbell Place, Stoke on Trent. Rent £37,000 pa as a review 26 November 2015 stated OMV and L all repairs.

21. The respondent also referred to his schedule of comparable property evidence which included the following:

Inc 34-50 Kempston Street, 6-12 Audley Street, Liverpool – 4,019.64m^2 @ £50.00/m^2 = say £115,000 RV.

Ex B & M 145/163 London Road, Liverpool (since closed) – 1,246m^2 @ £80.00/m^2 = £98.500 RV.

Beacon Bed World, 129-139 London Road Liverpool – valued as zoned £54.48/m^2 overall = £46,000 RV.

Postal Sorting Office, Copperas Hill, Liverpool – 27,584m^2 @ £20.00/m^2 = £330,000 RV as entered into the 2017 Rating List. The property has since been demolished.

Winfield's, 283-287 Hessle Road, Hull - 3,517.6m^2 @ £22.00/m^2 = say £77,000 RV

Boyes 224/234 Hessle Road, Hull – 3,767m^2 @ £23.00/m^2 = say £86,500 RV.

22. The respondent contended that £20.00/m^2 was reasonable. It was one of the lowest values applied to a retail property in this location and was similar to that applied to warehousing. Looking at other properties in the valuation scheme, F W Woolworth & Co Ltd, 7 Rivington Road, Ellesmere Port which measured 2,586.42m^2 was valued at £19.50/m^2.

23. In relation to an end allowance for split site, the appellant's representative referred to Arcadia Group, 24-46 Church Street, Liverpool where a 10% allowance was given for merged units. This was a large shop in a prime location in Liverpool City Centre. It was comprised of two physically separate shops operated by the Arcadia Group but assessed as one unit. The appellant's representative believed that the end allowance on the subject property should be greater than 10% due to the fragmentation of the split site and sought a 20% end allowance for this factor.

24. The respondent stated that with regard to end allowance the values of large shops valued to GIA overall, the unit price would normally reflect factors such as layout. Furthermore, no end allowance was included in the 2010 assessment. He therefore believed that no allowance for split site was warranted.

Decision and reasons

25. The main issues in dispute concerned the areas, the level of value to be adopted for the appeal property and whether an end allowance of 20% was justified for a split site.

26. 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".

27. 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).

28. 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.

29. 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.

30. Having considered the rents as being a useful starting point, the panel did not feel that they were conclusive. The rents on the appeal property were from November 2012 when the AVD was 1 April 2015. The rents were therefore too far away from AVD to be helpful. Little weight was attached to the other rents provided by the respondent due to the adjustment each of them required.

31. Turning to the calculations for the appeal property, the panel was disappointed that little progress had been made to resolve the dispute over the areas following the previous

adjournment. Having considered the matter, the panel was minded to go along with the areas that had been agreed on the previous list by the different parties involved in those discussions at that time. However, it was noted that the respondent was prepared to adjust his figure slightly in favour of the appellant and so the revised area of 18,313m^2 was accepted by the panel.

32. In relation to the main space price, the panel was not persuaded to reduce the existing £20.00/m^2. This figure was at the lower end of the scale within the assigned valuation scheme which started at £19.50/m^2. The panel noted that the comparable properties cited by the appellant's representative were located throughout the country. It found it difficult to compare those locations to Liverpool. The respondent's comparable properties were closer to the appeal property. However, none of the assessments provided were anywhere near the size of the appeal property.

33. In relation to the split site allowance, the panel found there was sufficient interconnectivity between the units within the appeal property not to warrant the allowance sought by the appellant's representative. Furthermore, the panel believed that the site layout would have been reflected in the basic value and there had been no changes to this arrangement over the Lists. Therefore, the panel was satisfied that no allowance should be given for split site in the assessment for the appeal property.

34. In view of the foregoing, the panel decided to apply the VO's revised area of 18,313m^2 at £20.00/m^2, with no end allowance. This gave a revised valuation of £366,250 RV, rounded to £365,000 RV, as contended by the respondent at the hearing.

35. Consequently, the appeal was allowed in part, the RV was reduced to £365,000 with effect from 1 April 2017.

Order:

36. Under the provisions of regulation 38(4) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to amend the entry in the rating list to show a revised assessment of £365,000 RV for the appeal property, with effect from 1 April 2017.

37. Under regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

38. The appellant is also entitled to a full refund of the fee paid in accordance with regulation 13E(1)(a) of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 (as amended)) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

Date: Friday 16 December 2022

Appeal number: CHG100156348

Right of Appeal:

Any party who is aggrieved by the Tribunal's decision, and who appeared or was represented at the hearing, has the right of appeal to the Upper Tribunal (Lands Chamber). Any such appeal should be made within four weeks of the date of this decision notice.