THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; shop and premises; price per m² to be adopted in the assessment; dispute over areas; rental evidence; the revised assessment proposed by the Valuation Officer was found not to be excessive; appeal allowed in part.

RE: Boots the Chemists Ltd, Unit 2 Cornhill, Broadway, Accrington BB5 1EX

APPEAL NUMBER: CHG100171435

BETWEEN	Boots Limited	Appellant
	and	
	Mr R Roberts (Valuation Officer)	Respondent

PANEL: Dr J Johnson (Senior Member) and Mr K Sutch

CLERK: Mrs A Keohane

REMOTE HEARING 2: Wednesday 24 November 2021

APPEARANCES: Mr K Lo of GL Hearn on behalf of the appellant, as advocate and expert witness
Mr B Slater on behalf of the Valuation Officer as advocate only

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Summary of decision

1 Appeal allowed in part. The panel was satisfied that the appeal property's assessment was correctly based on £325/m². The Valuation Officer's proposed assessment of £47,000 rateable value (RV) with effect from 1 April 2017, was confirmed.

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 hearing was conducted remotely via a Microsoft Teams conference call using an 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 is a 2017 rating list appeal. Unit 2 Cornhill, Broadway, Accrington BB5 1EX (the 'appeal property') had been entered in the 2017 rating list as 'Shop and Premises at £49,500 RV with effect from 1 April 2017, based on a zone A rate of £325/m^2.

6 The challenge proposal, submitted by G L Hearn on behalf of Boots Ltd, was received by the Valuation Officer on 25 February 2020. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was wrong. A revised assessment of £29,800 RV was proposed with effect from 1 April 2017.

7 The Valuation Officer issued a challenge case decision notice on 5 March 2021, which stated that based upon the evidence and information available, the existing rating list entry was considered to be correct, and no amendment would be made.

8 In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, an appeal was received by this Tribunal against the Valuation Officer's decision on 5 July 2021.

9 As Mr Lo appeared on behalf of the appellant as both advocate and expert witness, the clerk asked if there was a success related fee involved and if so whether its existence was compatible with his obligations to the Tribunal as an expert. This question was raised in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC).

10 Mr Lo declared that he was not instructed under any conditional or success related fee. He confirmed 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. The expert evidence was considered, and the panel attached appropriate weight to it.

11 The appeal property is a two storey retail premises with a total area of 428.32m^2. It comprises ground floor retail areas with first floor ancillary accommodation. It is situated on Cornhill, a short parade of five shops leading to the entrance to Cornhill Shopping Centre in Accrington town centre.

12 Mr Lo identified that the size of the appeal property was disputed, and his revised valuation reflected the correct area (428.32m^2). The day prior to the hearing,

Mr Slater confirmed acceptance of Mr Lo's areas and proposed a valuation of £47,000 RV, using those areas, but still based upon the existing rate of £325/m^2. The panel accepted these revised valuations.

13 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 it being overlooked by the panel.

Issues

14 The issue to be determined was the zone A rate to be adopted in the appeal property's rating assessment. The Valuation Officer contended for the existing rate of £325/m^2. Mr Lo argued that evidence supported his revised rate of £210/m^2.

Evidence and submissions

15 The bundle of evidence before the panel comprised all of the documents exchanged between the parties as part of the challenge process: the appellant's challenge submission and full supporting information; the Valuation Officer's initial response; the exchanges of evidence between the parties; the Valuation Officer's challenge case decision notice, rental and assessment evidence; location plans; photographs and details of a challenge submitted by GL Hearn in relation to 7 Cornhill Shopping Centre.

16 To support his valuation of £31,500 RV based on £210/m^2, Mr Lo outlined in his challenge documentation and oral presentation the reasons he believed the appeal property's current valuation was incorrect. Very briefly these included:

i. For the 2010 rating list, different values had been applied to the odd and even sides of Broadway. For the 2017 rating list, the Valuation Officer had determined that rents on both sides supported the same zone A price of £325/m^2. On the even side of Broadway, rents in 2013 and 2017 analysed to above this value. However, evidence of rents closer to the AVD, equated to no more than a zone A price of £210/m^2

ii. The Valuation Officer had taken account of all rental evidence between 2013 and 2017 in determining the level of value to be adopted in this locality; Mr LO considered this to be contrary to the approach taken in the decision of *Specialeyes v Felgate*.

iii. Three of the eight rents considered by the Valuation Officer were within a different parade on the opposite side of the road, which had then been valued at a lower zone A rate than the appeal property.

iv. One rent had been set in 2013, in a stronger market as Marks and Spencer still had a presence in the area at that time. However, Marks and Spencer had vacated by the material day in the subject appeal.

v. Two of the remaining four rents had been set one and two years after the AVD and therefore in a different market to the declining one that existed after 2013 to the AVD.

vi. The remaining two rents were agreed at the AVD and analysed to £203/m^2 and £210/m^2. These were considered to be the best evidence and it was the higher of these two rates on which the appeal property's proposed assessment had been based.

vii. The appeal property was subject to a lease renewal with effect from 1 July 2017, however this had been negotiated in 2013 as a reversionary lease to commence in 2017. The rent analysed to £425/m^2. Mr Lo argued that little weight should be attached to this rent due to the terms on which it was set and its distance from the AVD.

17 In light of the above, Mr Lo sought confirmation of his proposed assessment of £31,500 RV with effect from 1 April 2017.

18 On behalf of the Valuation Officer, Mr Slater referred to the rental and assessment schedules he had provided. In the challenge decision and in his oral presentation, he submitted that the value to be attributed to properties in this locality had previously been discussed as part of a Group Pre-Challenge Review (GPCR); however, an agreement on value could not be reached.

19 As a result of these discussions and the basket of rental evidence from 2013 to 2017, the Valuation Officer had considered that the zone A price applied to some of the assessments on Broadway, Market Square and Cornhill were excessive. As a result, changes in values were proposed as follows: 4-16 Broadway (inclusive), from £325/m^2 to £300/m^2, 15-19 Broadway, 25-29a Broadway, 1a to 7-8 Market Square and 1a Cornhill to unit 6 Cornhill from £350/m^2 to £325/m^2.

20 Although the assessments of 40 to 52 Broadway had not been discussed during the GPCR, the assessments were still reviewed but deemed to be reasonable. Three rents had been available for these units, which supported an adopted tone of £190/m^2 for this area. To date no challenges had been made against these properties. The Valuation Officer considered that footfall and values dropped significantly in this area compared to other areas of Broadway and therefore £190/m^2 should be the lowest value adopted on Broadway.

21 Addressing the revised assessment proposed by Mr Lo, based on £210/m^2, Mr Slater did not consider there was sufficient differential in values between the £190/m^2 adopted for the properties in the lower footfall area and the appeal property, to reflect the difference in the locations.

22 Mr Slater referred to the challenge made on 7 Cornhill Shopping Centre and confirmed that at the time the decision was issued in the subject case, the challenge was still outstanding. Ultimately, the zone A rate for the centre had been reduced from £350/m^2 to £270/m^2. No appeals had been made against this reduction and the deadline for such had now passed. Mr Slater considered that the units outside of the mall were better located and more valuable than those inside; therefore, the assessment of the appeal property, based on the lower value of £210/m^2, was unsupported.

Decision and reasons

23 In arriving at its decision, the panel was governed by rating legislation laid down by Parliament where Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999, provided that:

> "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;
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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;
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> 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.

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

25 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.

26 The Lands Tribunal judgment in *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141 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.

27 As outlined in *Lotus and Delta*, the starting point was the consideration of the actual rent, but the circumstances as to time, subject matter and conditions relating to the statutory requirements had to be taken into account when deciding the weight to attach to it. Given the nature of the reversionary lease, the changes affecting the market between the time it was agreed in 2013 and its effective date in 2017, for example the closure of Marks and Spencer, the panel did not find this rental evidence to be persuasive and therefore placed low weight to it.

28 Consideration was therefore given to the rental evidence provided for other properties in the appeal property's locality. Mr Lo had referred to the decision of *Specialeyes v Felgate (VO)* [1992] RA 387/1992 and considered that the rents closest to the AVD had not been given particular attention when determining the correct value to be applied to the appeal property. However, the panel considered that *Garton v Hunter* [1969] 2 QB 37 was useful; given that within this case, Lord Denning MR had said, at 44, "We admit all relevant evidence. The goodness or badness of it goes only to weight, not to admissibility"

29 Mr Lo had mainly relied on two rents, Unit 1A Cornhill and 25 Broadway, as these had been set in April and September 2015 respectively. The analysis of these rents supported the zone A rate of £210/m^2 adopted in his proposed assessment. The panel noted there was some confusion over the details of 1A Cornhill as it appeared there were two units described as 1A, one within the Shopping Centre and one outside. Mr Slater confirmed that the details shown in the rental summary schedule related to the unit in the Centre. Within the bundle was rental evidence relating to the Shopping Centre, used in the challenge for 7 Cornhill Shopping Centre. Details of a Unit 1A Cornhill were set out within the rental schedule and these were the same as those included in the rental schedule provided for the subject case. It therefore appeared that the 1A Cornhill valued at £270/m^2 was the unit within the Shopping Centre and not the unit outside.

30 After due consideration, the panel found the best approach to determining this appeal was by reference to the basket of rents put forward by the Valuation Officer for properties within the locality. In looking at this evidence, the panel found that the rental evidence relied on by Mr Lo did not appear to be supported by other rental evidence in the area.

31 After considering the rental evidence, the panel decided to place less weight to the rents set in 2013, which analysed to £434.70/m^2 and £451.26/m^2, as market conditions may have been different at that time; given Mr Lo's contention that the announcement of the closure of the Marks and Spencer store had not been made until 30 December 2014. As outlined above, low weight was attached to the rent of the appeal property effective from 2017 and which analysed to £476.83/m^2, given the terms on which it was set and its distance from the AVD.

32 Particular attention was paid to the rents set in 2015 and 2016, with the exception of 1A Cornhill. These related to 4 Broadway, 12 Broadway, 25 Broadway and 2 Market Square, which the location plan showed were within a reasonable distance of the appeal property. Two of these rents had been set in May 2015, one in September 2015 and one in July 2016. The rents had analysed to rates of £333.78/m^2, £347.80/m^2, £203.52/m^2 and £475.48/m^2. The panel accepted the appellant's contention that despite this rental evidence some of these properties had been valued using the lower rate of £300/m^2. The panel considered that, as anomalies may exist in the rates applied to properties in the locality, the rental schedule provided the best evidence in this appeal. The panel was satisfied that the majority of the rental evidence did not show a valuation based upon £325/m^2 to be excessive.

33 Mr Lo had queried the different approach taken by the Valuation Officer when valuing properties in this locality in the 2010 and 2017 rating lists. However, the panel accepted that each rating list was distinct and separate and should be viewed accordingly.

34 In response to Mr Slater's comments that very few challenges had been received for properties in this locality, Mr Lo pointed out that there was still time for challenges and subsequent appeals to be made against the values applied. Whilst accepting that this may be the case, the panel was required to determine the assessment of the appeal property based on the evidence currently before it.

35 On balance, the panel considered it had not been demonstrated that the Valuation Officer's proposed assessment, based upon the zone A rate of £325/m^2 but reflecting amended areas, was excessive. The proposed assessment of £47,000 RV was therefore confirmed. As this was lower than the assessment contained in the Valuation Officer's Challenge Decision Notice, the appeal was allowed in part.

Order

36 As a consequence of the above, the Valuation Officer is ordered to amend the appeal property's 2017 Rating List entry to £47,000 RV with effect from 1 April 2017, within two weeks of the date of this Order.

Refund of fees

37 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 (Alteration of Lists and Appeals) (England) Regulations 2009 (as amended). This will be arranged by the Tribunal administrative office as soon as possible.

Date: 20 December 2021

Appeal Number: CHG100171435