THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; shop and premises; accuracy of the rateable value in the compiled list; comparable assessments and rental evidence; appeal dismissed.

RE: 42 Bull Street, Birmingham B4 6AF

APPEAL NUMBER: CHG100171935

BETWEEN:	Waylands Yard Ltd	Appellant
	and	
	Mr D Virk	
	(Valuation Officer)	Respondent

PANEL: Mr M Heslop-Mullens (Senior Member)
Mrs F E R Duggan

CLERK: Mrs A Keohane

HEARING: Remote hearing 2 on Thursday 1 September 2022

APPEARANCES: Mr A Simons of Altus Group on behalf of the Appellant as surveyor-advocate and expert witness
Mr Humes on behalf of the Valuation Officer as advocate and expert witness

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Summary of decision

1 Appeal dismissed. No change was made to the appeal property's current assessment of £28,500 Rateable Value (RV), effective from 1 April 2017.

Introduction

2 This is a 2017 rating list appeal in respect of 42 Bull Street, Birmingham B4 6AF (the 'appeal property'). The property was entered into the rating list as a 'shop and premises' at £30,750 RV with effect from 1 April 2017. This assessment was reduced to £30,500 RV at the check stage, reflective of the information provided.

3 The challenge proposal was submitted by Altus Group on behalf of the Appellant and was received by the Valuation Officer on 27 February 2020. Within the proposal a revised assessment of £22,000 RV was sought based upon a zone A rate of £270/m^2. During the challenge process this was further revised to £24,250 RV based

on a zone A of £300/m^2, £26,250 RV based on a zone A of £325/m^2 and ultimately, £25,250 RV based on a zone A of £310/m^2.

4 The Valuation Officer issued a challenge case decision notice on 9 June 2021, which stated that based upon the available evidence, the current rating list entry was considered to be unreasonable. The assessment was altered to £28,500 RV, based on a zone A rate of £350/m^2, (reduced from £375/m^2) with effect from 1 April 2017.

5 As the assessment had not been altered in the way sought in the proposal, in accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, an appeal was submitted to this Tribunal on 8 October 2021 on the grounds that the valuation for the hereditament is not reasonable.

6 The subject property is retail unit that is part of a mixed-use retail/office building arranged over six floors. The Appellant occupies the ground floor only.

7 Mr Simons appeared on behalf of the Appellant as expert witness and surveyor-advocate. 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 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 panel accepted this expert witness evidence on the above basis as the appeal is not complex and to do otherwise would be contrary to regulation 3 (Discharge of 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). The panel therefore considered the "expert" evidence and attached such weight to it as it saw fit.

8 This decision document 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 its decision. 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.

Issue

9 The dispute related to the zone A price to be applied in the appeal property's assessment. Mr Simons sought an assessment based upon a zone A rate of £310/m^2. Mr Humes maintained that the existing assessment based on a zone A rate of £350/m^2 was reasonable.

Evidence and submissions

10 The tribunal was provided with a bundle of evidence which included: the parties' respective cases; the challenge decision notice; rental and assessment evidence from both parties; photographs of the appeal property; location, site and goad plans; the challenge document; correspondence between the parties; details of the appeal property's valuation scheme; letting details for 42-43 Bull Street; and case law.

Leases were also provided for 74 and 75 Bull Street and Unit 12 The Minories. A copy of a previous Valuation Tribunal decision in relation to 74 Bull Street (CHG100093129) was also submitted.

11 In his submission and oral presentation, Mr Simons explained that the appeal property was situated on the weaker side of Bull Street in an isolated retail position with mainly office occupiers adjacent. He considered that the rental evidence for his comparable properties at 74 and 75 Bull Street and Unit 12 The Minories provided the most reliable evidence and supported his revised zone A rate of £310/m^2.

12 Mr Simons confirmed that the appeal property's rent, set on 26 January 2018, reflected a new letting at £29,000 per annum (pa) with a six months' rent-free period and a further 12 months at half rent. When analysed, the rent produced a zone A rate of £328/m^2. Mr Simons accepted that the rent had been set almost three years after the AVD; however, the disruption to the area caused by the tram works and removal of bus stops had ceased by this time and the locality was as it stood at the material day of 1 April 2017. Mr Simons therefore considered that the zone A rate produced by the rent supported his proposed assessment.

13 Mr Simons argued that the majority of the rental evidence within the Valuation Officer's schedule related to properties in higher value locations on Bull Street that had rents set in 2013. The Valuation Officer had included the rents of 74 and 75 Bull Street; agreed in December 2014 and August 2015; however, Mr Simons did not agree with the Valuation Officer's analysis of these rents. For rents set in 2014/2015, the Valuation Officer had applied adjustments to counterbalance the temporary allowances that had been made in rating assessments to reflect tram works (20%) and the removal of bus stops (20%) within the locality. He argued that the length of the leases had been 10 or 15 years and to make the adjustment on the first year's rent was fundamentally wrong and not supported by any reference to rental adjustments set out within the leases. Whilst he accepted that the hypothetical tenant may have negotiated a lower rent to reflect the works, he considered the approach taken by the Valuation Officer was incorrect. He also argued that any adjustment had to be balanced with the benefits the works would eventually bring.

14 Mr Simons contended that even if he was to accept the Valuation Officer's method of adjusting for allowances, the only upward adjustment to be made to the 2014/2015 rents of 74 and 75 Bull Street was 20% for the removal of the bus stops. His calculations in relation to this were included in his submission. The allowance for tram works had been removed from assessments on 6 December 2015, the date the tram line opened, and all but minor works had been completed by mid-2015.

15 Having regard to the evidence of his comparable properties, Mr Simons sought confirmation of his revised assessment of £25,250 RV based on a zone A rate of £310/m^2.

16 Mr Humes explained that the appeal property was situated in the city centre, within a mixed use building near to Snow Hill Station. He considered that little weight could be attached to the appeal property's rent due to its distance from the AVD; however, he accepted that it was a reasonable starting point. The appeal property had been placed in scheme 421325, which related to shops in The Minories, Colmore Circus, Colmore Gate and Bull Street between numbers 41 to 102b.

17 Mr Humes referred to the Valuation Officer's schedule setting out rental evidence for properties on Bull Street, Colmore Gate and The Minories. The rents of 79, 83, and 69 Bull Street had been set in 2013 and analysed to zone A rates of between £654.93/m^2 and £984.06/m^2; their assessments were based on zone A rates of £600/m^2 and £550/m^2, dependant on their location. In analysing the evidence for the rents set in 2014/2015, Mr Humes considered it was appropriate to have regard to the impact of any reductions in rent due to disruptions, such as the tram works and removal of the bus stops. Schedule 6(2)(7) to the Local Government Finance Act (LGFA) 1988 required the physical state of the locality to be taken as it was at the material day. Therefore, he had to consider what the rental value of a property would be at the AVD, assuming the physical state of the locality was that which existed on 1 April 2017.

18 Mr Humes considered it was entirely feasible that the rents of the comparable properties agreed in 2014/2015 had been negotiated at a level which reflected the disruption to the area. The Transport and Works Order to enable the tram works had already been applied for and the public enquiry into the proposal had completed. He considered that the market would have been aware of the proposed works and would be able to gauge the extent of any disruption from the earlier tram works in 2012. Mr Humes argued that in devaluing the rents, regard should be had to the end allowances that were included in assessments in order to ascertain an appropriate rental value as at the AVD. He had therefore upwardly adjusted the 2014/2015 rents for 74 and 75 Bull Street and Unit 5 Colmore Gate, which resulted in zone A rates of between £573.55/m^2 and £657/m^2.

19 Having regard to the totality of the rental and assessment evidence from within the locality, Mr Humes considered that the appeal property's valuation, based on a zone A rate of £350/m^2, was not shown to be unreasonable. He therefore sought dismissal of the appeal.

Decision and reasons

20 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 to the LGFA 1988). The date of the hypothetical rent was 1 April 2015 (AVD). Matters affecting the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 for this appeal.

21 Firstly, the panel had regard to the Lands Tribunal judgment of *Lotus & Delta v Culverwell and Leicester City Council (*LVC/376/1975) which indicated that the starting point in assessing a property for rating purposes was its passing rent. Mr Simons had initially analysed the appeal property's January 2018 rent to reflect the six months' rent-free period followed by a year at half rent. This gave an effective rent to the first review of £24,650 pa, which equated to a zone A rate of £301.82/m^2. During exchanges in the challenge, Mr Simons had re-analysed the rent and incentives over the 10-year period of the lease and come to a zone A rate of £328/m^2. Whilst the panel accepted that this rent had been set 33 months after the AVD, it agreed with the parties that it was a suitable starting point.

22 The panel examined the rental evidence for the comparable properties. After looking at the plans, the panel found some merit in Mr Simons' argument that the appeal

property was in a relatively isolated retail position with office occupiers in close proximity. The panel was not persuaded that the 2013 rents for 79, 83, and 69 Bull Street provided the best evidence; given they were in a better retail location. In addition, no weight was placed to the rent of 41 Bull Street as it had been established that it was between connected parties.

23 On balance, the panel accepted that the best evidence was that provided by 74 and 75 Bull Street. Whilst these were described as being on a superior retail pitch, they were on the opposite side of the road and relatively close to the appeal property. However, both parties had analysed these rents differently.

24 The Valuation Officer had loaded the rents, in effect, included an addition to offset the allowances given in assessments to reflect the tram works and the removal of the bus stops, 40% in total. The adjusted rents had analysed to zone A rates of £573.55/m^2 and £575.82/m^2. Whilst Mr Simons did not agree with this approach, he had re-analysed these rents to reflect a 20% addition over five years, to counter the allowance for the removal of the bus stops. He had made no addition for the tram works on the grounds that the 20% allowance applicable to this had been removed from assessments in December 2015. His re-analysis of the rent of 75 Bull Street produced a zone A rate of £383/m^2 and for 74 Bull Street a zone A rate of £380/m^2. Both of the assessments had been based on a zone A rate of £550/m^2; however, following a Valuation Tribunal decision, the rate adopted for 74 Bull Street was reduced to £460/m^2.

25 After due consideration, the panel determined that as the rents of 74 and 75 Bull Street had been set in December 2014 and August 2015 respectively, the disruption from the tram works was still present as the tram line did not open until December 2015, when the allowance for such was removed from assessments. Therefore, it was not unreasonable to expect a hypothetical tenant to have negotiated a reduced rent reflective of both the tram works and the removal of the bus stops. Thus, the panel was persuaded that some adjustment should be made in the rents of these properties to counter the allowances given for both of these factors.

26 Mr Humes confirmed that the adjustment of the 2014/2015 rents in his schedule had been an approach that had been applied consistently to rents in the area where appropriate. Mr Simons had initially analysed these rents without any adjustments and then with a 20% adjustment over a period of five years, as he considered that adding back the adjustments on the first year's rent was fundamentally wrong. The panel preferred Mr Simons' approach and therefore following the calculations and analysis shown in his evidence but increasing his 20% adjustment to 40% over five years, produced an adjusted zone A rate of £395/m^2 for 74 Bull Street and £398/m^2 for 75 Bull Street. The panel accepted that these comparable properties were in a better retail location, and this was reflected in the higher tone (£550/m^2 and £460/m^2) adopted in their assessments. However, the panel was not persuaded that the rental or assessment evidence for these properties demonstrated that the zone A rate of £350/m^2 applied to the appeal property was excessive.

27 Mr Simons had also submitted details of his comparable property, 12 The Minories. Its rent had been set in May 2016 and he had analysed this to a zone A rate of £252/m^2. From the plans, the panel noted that Temple Court, The Minories was a retail arcade off Bull Street which Mr Simons had referred to in his submission as part of the lower value Temple Court scheme. The rental evidence provided for properties

in this locality set in 2013, 2014 and 2015, reflected rents that devalued to £364.07/m^2, £305.78/m^2 and £463.44/m^2 respectively, and assessments had been based on £350/m^2 zone A. The panel found that the totality of the evidence from this arcade did not show that the zone A rate applied in the appeal property's assessment was unreasonable.

28 Finally, whilst noting that the rent of the subject had been set 33 months after the AVD, the panel acknowledged Mr Simons' contention that it reflected the locality as it was at the material day, when the works were no longer in progress. It would also reflect the benefits to the area brought by the tram installation. Mr Simons had analysed this rent to a zone A rate of £328/m^2, which he considered was supportive of his proposed rate. The panel took the view that the zone A rate produced by the rent, did not establish that the rate adopted in the current assessment was excessive.

29 Having regard to the above, the subject appeal was dismissed.

Date 30 September 2022

Appeal Number CHG100171935

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.