THE VALUATION TRIBUNAL FOR ENGLAND

Summary of Decision: non-domestic rates; 2017 rating list appeal; Shop and Premises; Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council [1976]; rental evidence; comparable assessments; the evidence did not show that the assessment of the appeal property was unreasonable; appeal dismissed

Re: 2/6 Devonshire Road, Burnham on Crouch, Essex, CM0 8BH

APPEAL NO: CHG100177077

BETWEEN:	Marts Parts	Appellant
	and	
	Mrs J Moore (Valuation Officer)	Respondent

BEFORE: Mrs M J Cole (Senior Member) and Prof. I Solanke

CLERK: Mrs A Keohane

REMOTE HEARING 2: Thursday 15 April 2021

APPEARANCES: Mr C Strong of Altus Group on behalf of the appellant as surveyor-advocate and expert witness
Mr P Emerick of Altus Group on behalf of the appellant as advocate
Mr D Walker on behalf of the respondent as both advocate and expert witness.

Summary of decision

1. The appeal was dismissed. The assessment remains at £17,500 rateable value (RV) 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. This appeal has been brought in respect of the following: 2/6 Devonshire Road, Burnham on Crouch, Essex, CM0 8BH, (the ‘appeal property’) which was originally entered in the 2017 Rating List as ‘Shop and Premises’ at £21,500 RV, effective from 1 April 2017. This assessment had been reduced at check stage to £20,500 RV then to £19,500 RV. Following the submission of the challenge proposal the assessment had been amended to £17,500 RV, based on an unadjusted rate of £155/m^2 with a 5% allowance for width to depth ratio.

5. The challenge proposal, received by the Valuation Officer on 12 March 2020, sought a reduction in the appeal property’s assessment to £13,250 RV with effect from 1 April 2017 based on £140/m^2 and a 20% allowance to reflect the width to depth ratio. The Valuation Officer did not agree to amend the valuation in accordance with the challenge proposal and issued a decision notice to that effect on 16 September 2020. The appellant’s representative appealed to this Tribunal on 8 January 2021 on the grounds that the valuation for the hereditament was not reasonable.

6. This is a compiled list appeal and therefore the material day is 1 April 2017.

7. The appeal property is a triple retail unit held by the appellant on a freehold basis. It is on the ground and first floors of 2/6 Devonshire Road, a predominantly residential parade connecting to Station Road and High Street, the prime parade in the locality consisting of independent retailers. Both parties had agreed that it was within a tertiary area of Burnham on Crouch.

8. Mr Emerick appeared as advocate only. Mr Strong appeared as surveyor-advocate and expert witness. Therefore, it was important to ascertain 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).

9. Mr Strong’s declaration set out that Altus Group was representing the appellant on a contingency based fee. He declared 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 his client’s case.

10. The expert witness evidence was accepted 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 "expert" evidence was considered, and the panel attached weight to it as it saw fit.

11. Mr Strong had submitted an Expert Witness Report (EWR) that had not been available or exchanged during the challenge process. Mr Walker objected to its inclusion and considered it to be a substantial document compared to the limited evidence provided by the representative in the initial challenge. Mr Walker felt disadvantaged at being faced with this extra information at this stage in proceedings. There was also a revised assessment for the appeal property, based on different figures to that sought in the challenge proposal.

12. The panel discussed the inclusion of the EWR, which Mr Strong affirmed contained no new evidence but the information previously exchanged 'tidied up' to assist the panel. It was ascertained through questions that the EWR appeared more substantial then the information provided at the challenge stage because it included some of the evidence exchanged by the Valuation Officer. However, a substantial lease document had also been included at the appeal stage for 6/8 Station Road. Mr Strong could not confirm whether this had been provided to the Valuation Officer but believed it had come to light after the challenge decision had been issued. Whilst the Valuation Officer was aware of the rental details for this property, he was unaware of the full terms of the supporting lease. Having regard to this, Mr Emerick withdrew the lease.

13. On balance, the panel decided to accept the EWR, together with the representative's revised valuation, which was not considered to be new evidence but a different view on the facts pertinent to the property.

14. 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 when coming to its decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as being overlooked by the panel.

Issue

15. Whether the appeal property's current assessment at £17,500 RV was reasonable?

Evidence and submissions

16. Within the challenge documentation and in the oral presentation, it was confirmed that no factual differences existed between the parties. The rating representative contended that the appeal property's 2017 rating list assessment was incorrect and unsupported by the evidence available in the locality. A schedule setting out the rental evidence for High Street and Station Road was included and specific reference was made to:

    i. The rental details of 5 High Street which related to a lease renewal three months after the antecedent valuation date (AVD) for an effective rent of £11,383.33. Whilst this carried weight, as a lease renewal it did not provide the best evidence. This rent analysed to £173.15/m^2 but its assessment was based on £180/m^2, 3.81% higher.

ii. 34 High Street had been subject to a new letting 12 months after the AVD, with an effective rent of £9,025. This had analysed to £140.61/m^2 and its assessment was based on £180/m^2, a figure 21.88% higher.

iii. The evidence of 5 High Street and 34 High Street suggested that the tone adopted in this prime retail area was excessive.

iv. 22 Station Road had been subject to an agreement to reduce the unadjusted rate in the assessment from £165/m^2 to £140/m^2. This supported the appellant's proposed assessment also based on £140/m^2; given their proximity to each other. 22 Station Road was considered to be in a more advantageous position as there was a pedestrian crossing outside that directed footfall.

v. 42 Station Road had been valued at an unadjusted rate of £125/m^2, despite being in a more prominent position than the appeal property.

vi. 6/8 Station Road had been cited by the Valuation Officer as the key evidence to support the £155/m^2 applied in the appeal property's assessment. As a lease renewal, it was not considered to be the best evidence in this appeal.

17. In summary, and taking a stand back and look approach, Mr Strong asked the panel to allow his revised valuation of £15,750 RV for the appeal property, based on an unadjusted rate of £140/m^2 with an allowance of 5% (£133/m^2) to reflect the property's width to depth ratio.

18. In the Valuation Officer's challenge case decision notice, the assessment of the appeal property had been reduced to £17,500 RV based on £155/m^2 and an allowance of 5% to reflect width to depth ratio (£147.25/m^2). It was stated that having considered the issues raised in the challenge, there was little evidence to show that the appeal property's assessment was excessive. A rental schedule had been provided which set out the available rental evidence. In oral presentation at the hearing and within the decision notice, the following was specifically referred to:

i. The appeal property was placed within a scheme applicable to standard zoned shops situated in Burnham on Crouch. The values within the scheme ranged from £105/m^2 to £180/m^2 depending on size, location and other physical factors. The most commonly adopted price/m^2 in the scheme was £165/m^2. As the High Street was the prime retail area £180/m^2 had been adopted for most properties. Values applied to Station Road had been up to £165/m^2. Devonshire Road was further from the High Street and a predominately residential area; there was no rental evidence available for this area.

ii. In support of the 5% allowance for width to depth ratio in the appeal property's assessment, 18-20 Station Road was referred to, which had a similar width to depth disability with a 5% allowance given to reflect this. Mr Walker noted from the EWR that this element of the appeal no longer appeared to be in dispute; given the 20% allowance outlined in the initial challenge proposal was not being contended for and a 5% allowance was incorporated in the appellant's proposed revised assessment.

iii. The assessment of 5 High Street had been based on £180/m^2. The challenge submission had given the rent for this property and this had analysed to £173/m^2, effective from July 2015. This property was located on the High Street, further away from the subject.

iv. 34 High Street, an office and premises with an assessment based on £180/m^2. A 10% allowance had been given to reflect its non-standard frontage; it was not in receipt of an allowance for width to depth ratio. The rent with effect from July 2015, had analysed to £170/m^2. This property was also further away from the appeal property.

v. 22 Station Road. Following a challenge proposal, the basis of this assessment had been reduced from £165/m^2 to £140/m^2. It was reduced as a stand alone agreement and reflected that the property comprised a significant domestic element, which had not been reflected in the analysis of the rent. It also had layout issues which Mr Walker considered were also reflected in the revised price/m^2.

vi. 6/8 Station Road was situated close to the Devonshire Road junction and the appeal property. It had been subject to a lease with effect from 27 February 2014 and the rent had analysed to £154.49/m^2. Its assessment was based on £165/m^2. Although it was a lease renewal, it was the best evidence available in this appeal.

19. Mr Walker considered that the appeal property's current assessment, based on an unadjusted rate of £155/m^2 and a 5% allowance to reflect the width to depth ratio was not shown to be unreasonable. He therefore sought dismissal of the appeal.

Decision and reasons

20. The term 'rateable value' is defined in 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;
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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;

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 all entries in the 2017 rating list, the Rating Lists (Valuation Date) (England) Order 2014 requires the rental levels to be taken as at 1 April 2015, the AVD.

22. Various extracts of case law had been included within the parties' evidence. Reference was made to the Lands Tribunal decision in *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA141, which provided guidance on the weight to be attached to rental and assessment evidence. The rent was considered as the starting point and more weight was attached to those rents closest to the statutory criteria of rateable value and which were agreed closest to the AVD. Other rents were also considered in order to confirm or otherwise the level of value indicated by the actual rent of the appeal property. Other comparable assessments were also relevant but to a lesser degree. In light of all the evidence an opinion could be formed on the rental value of the appeal property, the weight to be attributed to the different types of evidence depending on one hand on the nature of the actual rent and, on the other hand, the degree of comparability found in other properties. In those cases where there were no rents available for comparison, a review of other assessments may be helpful, but in such circumstances, it would clearly be more difficult to reject the evidence provided by the actual rent.

23. In the subject case, the panel found that the appeal property was held on a freehold basis; consequently, there was no rental evidence available for consideration.

24. The parties had concluded there was only a limited amount of evidence pertinent to the appeal property, the panel found the same. In summing up their respective cases, they had made specific reference to three pieces of evidence. Mr Strong had relied on the agreement reached in respect of 22 Station Road and the rental details and assessment of 42 Station Road. On the other hand, Mr Walker had considered the most compelling evidence in this appeal was the lease renewal for 6/8 Station Road.

25. Addressing 22 Station Road, the panel noted that in accordance with the agreement reached, the price applied to this comparable property had been reduced to £140/m^2, the figure proposed by Mr Strong for the appeal property. After consideration, the panel was not persuaded that the agreement was the best evidence in this appeal. The lower price/m^2 applied to this property appeared to reflect specific circumstances pertinent to that property, which included the fact that it had a significant domestic element which had not previously been reflected. For this reason, this comparable property was not considered to provide the primary evidence in this appeal.

26. The rental and assessment details of 42 Station Road had also been referred to by Mr Strong, given the rent analysed to £123.49/m^2 and its assessment was based on £125/m^2. Although the value applied reflected the analysis of its rent, it was substantially lower that that applied in the assessment of other properties on Station Road. In the absence of an explanation for this, the panel placed less weight to this evidence.

27. All things considered, the panel decided to place the most weight to the rental and assessment evidence of 6/8 Station Road. The plan showed that the lower numbers on Station Road were closer to the appeal property, the higher numbers closer to the High Street. It therefore considered the rental evidence for 6/8 Station Road, which was close to the junction of Devonshire Road and further from the High Street than other properties on Station Road. Mr Strong had suggested that this property was occupied by a national retailer who may have agreed a higher rent than a smaller retailer would be prepared to pay. This was a subjective opinion; given there was no evidence before the panel to support this. Both parties in evidence had referred to the rent of this property being in respect of a lease renewal. Whilst it was not a new letting as envisaged by the rating hypothesis, nonetheless as a lease renewal it still carried significant weight. The rent had been agreed around 14 months prior to the AVD and had analysed to £154.49/m^2. The panel found that this did not show the £155/m^2 adopted in the appeal property's assessment to be unreasonable.

28. Within the rental schedule provided, details relating to 50, 86, 157 and 160 Station Road showed that these had been subject to rents set between January 2014 and December 2015, which had been analysed to prices of between £145.65/m^2 and £189.83/m^2. Their valuations were based on prices of £160/m^2 and £165/m^2. In the panel's opinion this did not show that the £155/m^2 applied to the appeal property, was unreasonable having regard to its residential area and location in relation to the High Street.

29. Consideration was not given to the level of allowance to reflect the width to depth ratio at the appeal property. Although within the evidence, Mr Strong had sought allowances of 20% then 10%, his proposed valuation had incorporated an allowance of 5%, the same as that already adopted in the appeal property's current assessment.

30. On balance, the panel found there was insufficient evidence to demonstrate that the rating assessment of the appeal property was not reasonable. Accordingly, the appeal was dismissed.

Date: 11 May 2021

Appeal number: CHG100177077