THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; Challenge against Compiled List entry; Shop and Premises; accuracy of rateable value; rental and comparable evidence considered; found that weight of evidence did not support a reduction in the assessment of subject property; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141*. Decision: Dismissed.*

RE: Gnd Floor Front, 319-323 West End Lane, London, NW6 1RN

APPEAL NUMBER: CHG100181301

BETWEEN:	John Lewis Partnership (Include Waitrose) (Represented by GL Hearn)	Appellant
	and	
	Andrew Ricketts (Valuation Officer)	Respondent

PANEL: Mr P Hickson (Senior Member)
Mr A Asante

REMOTE HEARING: 25 November 2022

CLERK: Mr J N Massey

APPEARANCES: Mr A Waller (Advocate and Expert Witness) of GL Hearn for the Appellant.
Mr C J Cates for the Valuation Officer.

Summary of decision

1. Appeal dismissed. The panel considered that the existing entry in the Rating List for: Gnd Floor Front, 319-323 West End Lane, London, NW6 1RN (the "subject property") of Rateable Value (RV) £172,000 was not excessive.

Introduction

2. This was a 2017 Rating List appeal. The appeal property had been entered in the 2017 rating list as ‘Shop and Premises’ at a RV of £172,000 with effect from 1 April 2017.

3. The challenge proposal was submitted by GL Hearn on behalf of the appellant and was received by the Valuation Officer on 24 March 2020. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was wrong. A revised RV of £133,000 was proposed with effect from 1 April 2017.

4. The Valuation Officer issued a challenge case decision notice on 15 June 2021, which stated that based upon the evidence and information available, the rating list entry of £172,000 RV was considered to be reasonable and there would be no amendment.

5. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal has been made on the grounds that the valuation for the hereditament is not reasonable. The appeal was received by the Tribunal on 12 October 2021.

6. The subject property comprises a retail premises and is situated in an area predominantly occupied by parades of retail units. The location has good transport links with bus stops nearby, and the West Hampstead train station about 1.5 miles to the south. It comprises 475m^2 of ground floor retail space (189m^2 in terms of zone A) within a detached building.

7. This document is not intended as a verbatim report of the proceedings, nor is it proposed to reproduce in full all of the parties’ evidence. 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 an indication that the statement or item of evidence has been overlooked by the panel.

Issue

8. The issue between the parties concerned the RV of the subject property and specifically, the zone A rate per m² that should apply. Mr Waller, for the appellant sought a revised valuation of £133,000 RV based on a zone A rate of £750 per m^2 with an allowance of 5% for size/layout and the removal of the 5% addition for return frontage. Mr Cates, for the VO, sought to defend the existing RV of £172,000 which was based on the existing zone A price of £900 per m² with no size/layout allowance applied.

Evidence and Submissions

9. As Mr Waller 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). Mr Waller declared that he was not instructed under any conditional fee arrangement. 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.

10. The evidence bundle comprised the documents exchanged between the parties as part of the challenge process. This included: the challenge document and supporting evidence; the information exchanged between the parties during the challenge process; details of the subject property along with a floor plan and photographs of its exterior; a GOAD plan of the

locality; details of comparable properties and the Valuation Officer's challenge case decision notice.

11. Mr Waller considered that the Zone A rate applied to the subject property was excessive in comparison with the rate of £750 per m^2 applied to almost all the other retails units on West End Lane. He stated that the only other retail unit valued at £900 per m^2 was Tesco at Bst & Gnd Floors 176-180 West End Lane, but stressed that this assessment has not yet been subject to a check or challenge and therefore remains unresolved and not indicative of a tone of value.

12. In his challenge and appeal, Mr Waller had given details of the rent passing on the subject property, which he stated was £160,000 per annum (pa) effective from 16 July 2014 on a new fifteen-year lease and this was increased to £180,133 pa from 16 July 2019 on an indexed basis. He considered that the rent on the subject property was an outlier and was not supported by the tone of £750 per m^2 applied to retail premises on West End Lane. Mr Waller had not provided a copy of the lease but in response to a question from Mr Cates, he confirmed that a premium of £150,000 had been paid to the landlord by the appellant on the commencement of the lease.

13. Mr Waller referred to the subject property being set back from the road and not easily visible from parts of West End Lane with the left hand flank of the building on a private unadopted road and the right hand side's visibility noticeably affected by West Hampstead Fire Station. He considered that the return frontage addition applied to the subject is not appropriate. He stated that no evidence has been provided by the respondent to support an inclusion of a return frontage addition and the return frontage included in the valuation within the 2010 rating list had been removed following an agreement.

14. He referred to a 5% allowance applied in the 2010 Rating List for the subject property for size and layout and considered that this should be carried over into the current list. In support of this he referred to the principle set out in *Barnard and Barnard v Walker(VO)* [1975] RA 383 that differentials between assessments in the 2010 list were correct and continued to apply in the absence of evidence to suggest otherwise.

15. The respondent contended that the subject property was different to the majority of properties valued within the scheme for shops in West End Lane. He stated that the scheme is dominated by smaller units within parades and the subject property is the largest unit valued within this scheme. He considered that the unit is more akin to a large convenience store, however, the valuation scheme for convenience stores is only applied to units up to around $300m^2$ and it is not large enough to be valued as a supermarket as the scheme for large shops in the area includes units over $1{,}850m^2$ gross internal area.

16. Mr Cates considered that as the subject property did not fit with any other category the rent passing on the subject property could be considered to be strong evidence to support its current RV. However, the agent had declined to provide further details of the lease and without the further details it had not been possible to adjust and analyse that rent to see how it fits with the definition of Rateable Value. He argued that if the RV was based on the passing rent on the subject property there wouldn't be a need for allowances as the rent should already reflect the advantages and disadvantages of that particular unit.

17. Mr Cates stated that there are return frontages on both sides of the subject property and while the left side is not on a main pedestrian street, the right of the unit protrudes forward

from the line of other buildings and so there is increased visibility and display space on that side.

18. Mr Cates referred to the 5% allowance for size/layout agreed for the subject property in the previous list when the property was in the list as a restaurant and premises and valued as such. When the property was subsequently assessed as a shop and premises the allowance was initially removed but was reinstated on appeal. While it was considered reasonable in the 2010 list, he considered that there was now evidence from the letting, and alignment of the RV with that rent would reflect the characteristics of the unit and any allowances would be double counting.

Decision and reasons

19. 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;
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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”.

20. 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).

21. 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.

22. Both parties had referred *to Lotus and Delta v Culverwell*. 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.

23. In considering the rent on the subject property, the panel was mindful that no copy of the lease had been provided. It was satisfied from the parties’ submissions that the rent agreed

in 2014 was £160,000 pa and required some upward adjustment to account for market movement between July 2014 and the AVD. It also considered that the premium of £150,000 paid by the appellant to the landlord should also be included in the analysis of the subject rent in order to align it with the definition of RV. Taking these factors into account, the panel considered that the rent agreed on the subject property indicated that its current RV of £172,000 was not excessive.

24. In considering the physical attributes of the subject property in relation to other retail properties on West End Lane, the panel noted that it was significantly larger and was detached rather than situated in a parade of shops. From the photographs and street plans provided by the parties it considered that the subject property was a distinctive and commanding property and would attract rental bids from different types of retailers to those bidding for the other retail properties on the street. The majority of retail premises on West End Lane had been assessed at £750 per m^2 and the panel considered that there was a tone of value at this level for those type of properties. However, it considered that the subject property differed from those other retail properties to such an extent that little weight could be placed on their assessments in determining the correct value for the subject property.

25. The panel was therefore of the opinion that significant weight should be given to the passing rent on the subject property, and the level of this rent supported the current zone A rate applied of £900 per m^2. The panel also considered that the rent agreed on the subject property would reflect any advantages or disadvantages and therefore did not indicate that either a 5% allowance for size should be applied, or that the uplift for return frontage on the Zone A area should be removed.

26. Having considered both parties' evidence the panel concluded that the zone A rate of £900 per m^2 adopted by the respondent was not excessive and that the resulting RV of £172,000 was supported by the passing rent on the subject property. The appeal is therefore dismissed.

Date: 23 December 2022

Appeal number: CHG100181301

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.