THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; price per m^2 in dispute; rental evidence; comparable assessments; appeal allowed in part.

RE: 48-49 Marine Parade, Southend-on-Sea SS1 2EN

APPEAL NUMBER: CHG100181348

BETWEEN: OP Trading Ltd Appellant

and

Jo Moore (Valuation Officer) Respondent

PANEL: Miss L Sharkey (Senior Member)
Ms J L Hadley

CLERK: Ms S Hodgson

ON: 8 July 2022

REMOTE HEARING

APPEARANCES: Mr A Bacon of JMA Chartered Surveyors for the appellant
Mr L Stevens of the Valuation Office Agency for the respondent

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Summary of decision

1. Appeal allowed in part. The rateable value (RV) of the subject property is altered from £59,000 to £38,500 with effect from 27 June 2019.

Introduction

2. This was a 2017 rating list appeal. The RV of the appeal hereditament was £59,000 with effect from 27 June 2019. The material day was also 27 June 2019. The challenge stage was completed on 16 September 2021. The appellant sought a reduction in the RV to £36,000.

3. The appeal hereditament was located on the Southend seafront close to the Southend Pier. The property was previously an amusement arcade but was currently being occupied as a shop unit. The total area of the property was 625.30m^2 and the present valuation of £59,000 was based on a Zone A rate of £240 per square metre (psm).

4. 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 before coming to its decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

Issue

5. The issue in dispute was the price per square metre to be adopted in the valuation of the appeal property.

6. The respondent raised an issue with the effective date; however, this was not part of the original challenge and therefore did not form part of this appeal.

Evidence and submissions

7. Mr Bacon appeared on behalf of the appellant as both Advocate and expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Bacon's declaration of truth included a statement that he was not instructed under any conditional fee arrangement. Mr Bacon 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 the client's case.

8. Mr Stevens appeared on behalf of the respondent as advocate only.

Decision and reasons

9. Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999, provides that:

   2(1) 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.*

10. 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).

11. 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 27 June 2019.

12. The panel heard from Mr Bacon that there was a lease on the property that included the residential flats on the upper floors. The lease for all parts was £52,000 with effect from December 2014.

13. The respondents evidence referred to a Form of Return (FOR) that was completed by the occupier in February 2021. On the form it was stated that the rent at the property was £36,000 with effect from 1 January 2015. Mr Bacon contended that the rent stated on the FOR was the portion for the ground floor, which was the subject of the appeal, whereas the £52,000 was for all floors.

14. The panel reviewed the evidence and noted the calculation provided by Mr Bacon in an email dated 6 September 2021 where he set out the separation of the residential units from the whole which resulted in the remaining £36,000 which was declared as the rent for the ground floor.

15. Mr Stevens was asked if he considered the approach that Mr Bacon had used to separate the residential and business components was accurate. Mr Stevens confirmed that he found this to be a fair and reasonable approach.

16. The panel heard from Mr Stevens that there was little rental evidence in the area, close to the AVD, and that there was nothing else that was close to the size of the subject property at 625.30m^2. Mr Stevens did not consider the size was detrimental to the subject property and it was his opinion that £240 psm was reasonable and was not out of kilter with other properties in the area.

17. The panel noted that the comparable rental evidence submitted by the respondent was for shops that measured between 30m^2 and 212m^2 and two restaurants that measured 344.90m^2 and 308.50m^2. The shops were valued between £210 psm and £250 psm for Zone A, and the restaurants at £345 psm and £350 psm.

18. It was the panels opinion that the restaurants were not comparable to the subject property. While there was a Subway food counter within the subject premises, the restaurants put forward only operated as food outlets. The subject property had a Subway counter at the rear of a Spar convenience store and had a soft play area that operated out of the site as well.

19. Mr Bacon referred to the respondent's comparable evidence and specifically identified 56 Marine Parade that had been analysed to £208.17 and was valued at £210 psm and queried how it was considered that £240 psm was supported for the subject property, when the evidence showed smaller units at £210 psm. Mr Stevens stated that he could not refute this point.

20. The panel found authoritative guidance from the Lands Tribunal's judgment in *Lotus and Delta Ltd v Culverwell (VO) & Leicester City Council* [1976] RA 141, regarding the weighting of evidence, in that, the passing rent, where available on the appeal property should be used as the starting point in its consideration of the rateable value for the appeal property. The more closely that rent matched the rating hypothesis, then the more weight should be attached to it.

21. As outlined in *Lotus and Delta v Culverwell,* there are six propositions to be followed when considering the weighting of evidence. The final of these is that where there are no rents available of comparable properties, a review of other assessments may be helpful. But in such circumstances, it would be clearly more difficult to reject the evidence of the actual rent.

22. The panel did not find the rental evidence submitted by the respondent to be truly comparable when considering the difference in sizes between the properties. It found that the significantly larger subject property would be valued on a lower rate to its size.

23. Initially there had been a dispute between the parties about the correct approach to valuation on the subject property. The respondent had valued it on a Zone A basis as a retail shop and Mr Bacon had valued it on an overall basis as an amusement arcade.

24. At the hearing Mr Bacon had amended his revised RV from the initial £30,250 he requested which was valued on an overall basis, to £36,000 which was on a Zone A basis of £150 psm.

25. Therefore, the only issue before the panel was that of valuation on a Zone A retail basis.

26. It was the panels view that the best evidence in this appeal was the rent on the subject property. It was a lease from December 2014 which was only four months prior to the AVD. While the effective date for the subject property in this appeal was 27 June 2019, the lease had been taken out in December 2014 including the upper floors with permission to use the upper floors as residential flats. As Mr Stevens agreed with the approach Mr Bacon took to assign £36,000 to the ground floor, the panel accepted this as the subject rent.

27. Based on the above findings and the actual rent of the subject property, the panel found that the current valuation of the subject property in the list was excessive and that the rate of £150 psm for Zone A was appropriate. This resulted in a revised rounded RV of £38,500 as follows:

Description	Area m^2/unit	£ per m^2/unit	Value (£)
Retail Zone A	121.00	150.00	18,150
Retail Zone B	109.90	75.00	8,243
Retail Zone C	116.70	37.50	4,376
Retail Zone D	128.70	18.75	2,413
Remaining Retail Zone	115.80	18.75	2,171
Office	24.20	18.75	454
Office	6.30	18.75	118
Staff toilets	N/A	0.00	0
Kitchen	2.70	15.00	41
Air Conditioning system	625.30	7.00	4,377
Plant and Machinery			241
		valuation sub-total	40,584
Layout/piers	-5.00%		
			-2,029
		valuation total	**38,555**

28. The appeal is therefore allowed in part, and 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).

Order

29. Under the provisions of paragraphs (4) and (9) of Regulation 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Tribunal orders the Valuation Officer to alter the List within two weeks of the date of this order to show a revised Rateable Value of £38,500 with effect from 27 June 2019.

Date: 4 August 2022

Appeal number: CHG100181348