THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; shop and premises; the available evidence demonstrated that the appeal property's current assessment was not unreasonable; appeal dismissed.

RE: 50-52 Long Row, Nottingham NG1 6HB

APPEAL NUMBER: CHG100181523

BETWEEN:	British Heart Foundation	Appellant
	and	
	Mrs J Moore (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 P Gould of Colliers on behalf of the Appellant as advocate and expert witness
Mr S Horder, on behalf of the Valuation Officer as advocate and expert witness

---

Summary of decision

1 Appeal dismissed. No change was made to the appeal property's current assessment of £112,000 Rateable Value (RV) with effect from 1 April 2017.

Introduction

2 This is a 2017 rating list appeal in respect of 50-52 Long Row, Nottingham NG1 6HB, (the 'appeal property'), which was entered into the rating list as a 'shop and premises' at £130,000 RV with effect from 1 April 2017. The challenge proposal was submitted by Colliers on behalf of the Appellant and was received by the Valuation Officer on 25 March 2020. Within the proposal a revised assessment of £76,500 RV was sought based on a zone A rate of £345/m^2 or £61/m^2 on an overall basis. This assessment was revised to £83,250 RV based on a zone A rate of £375/m^2 or £66.50/m^2 on an overall basis, upon clarification of the lease details.

3 The Valuation Officer issued a challenge case decision notice on 23 July 2021, which stated that based upon the evidence available, the current rating list entry was considered to be unreasonable, and it was amended to £112,000 RV with effect from 1 April 2017.

4 As the assessment had not been altered in the manner 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 29 October 2021, on the grounds that the valuation for the hereditament is not reasonable.

5 The subject is a large A1 retail unit located on Long Row close to its junction with Old Market Square, Market Street and St James Street. It comprises basement, ground and first floors and has a mixture of bare brick and plastered walls and a mix of plastered or suspended ceilings. The retail area benefits from air conditioning but the unit is irregular in shape and has differing floor levels throughout the basement and first floor area.

6 Mr Gould appeared on behalf of the Appellant as 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 Gould declared that he was instructed on a success related fee. 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 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.

7 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

8 The dispute related to the following:

- The price to be applied in the appeal property's assessment.
- Whether the appeal property should be valued by the zoning method or on an overall basis.
- If the property was valued by the zoning method, should the condemned area in the basement be included in the assessment.

Mr Gould sought an assessment based upon a zone A rate of £375/m^2, or £66.50/m^2 on an overall basis. Mr Horder maintained that the existing valuation, based on the zoning method and a zone A rate of £620/m^2 was reasonable.

Evidence and submissions

9 A bundle of evidence comprising the information exchanged during the Challenge process was provided for consideration. This included the parties' respective cases; location and goad plans; photographs of the appeal property; details of properties cited as comparable; the Appellant's revised valuation; assessments for comparable properties; and rental evidence. Reference to *Lotus & Delta v Culverwell (VO) and Leicester City Council* (LVC/376/1975), was also made.

10 In the written and oral presentation, Mr Gould confirmed that the appeal property was larger than other shops on Long Row and therefore an assessment based on the overall method of valuation would be appropriate.

11 The appeal property had been inspected by the parties and whilst several issues had been agreed, they had been unable to resolve whether a small area of the basement should be included within the valuation. This area had been condemned as it was situated too far from a fire exit; however, the Valuation Officer had declined to omit this from the assessment. That said, the rating representative had based his proposed assessment upon an analysis of the subject property's rent and therefore for the purposes of the challenge, this area had been left within the valuation. If it was found that the property should be valued by reference to rental evidence derived from other properties, it was argued that the condemned area should be removed from the assessment as the other properties did not have the same disability.

12 In the absence of an established tone, Mr Gould considered that the rent passing on the subject property, which had been set very close to the antecedent valuation date (AVD), provided the best evidence. The lease details included in the challenge document had subsequently proved to be incorrect as the initial rental information was a mix of data from the original 2010 lease and the revised agreement in 2015. The first lease was taken in 2010 for a five-year contracted out term to 17 August 2015 at £80,000 per annum (pa). In March 2015, the Appellant surrendered the lease and took in its place a new 10-year term from 25 March 2015 to 24 March 2025 subject to a break option after six years. This was done by a deed of variation of the 2010 lease but was still considered to be a new agreement. Under the substitute lease there was no rent-free period and the initial rent remained at £80,000 pa for three years, followed by a stepped increase to £90,000 pa for two more years with effect from 25 March 2018. There was also an open market rent review at 25 March 2020, upward only, but this had not been activated.

13 Upon analysis of the appeal property's rental evidence, Mr Gould proposed a revised assessment of £83,250 RV based on a zone A rate of £375/m^2 or £66.50/m^2 on an overall basis, which he considered to be fair and reasonable and in line with the Valuation Officer's adjusted rent for the appeal property of £83,627. He considered this revised assessment was reflective of the appeal property's physical condition, size, irregular layout, varying floor levels, all fit out, air conditioning and the unusual area in the basement.

14 Mr Horder could find no reason to depart from the zoning method of valuation currently applied in the appeal property's assessment. He confirmed that the appeal property's original assessment had been based upon a zone A rate of £720/m^2 with a 12.5% allowance for the irregular shape and a further 10% for changes to floor levels

within the retail space, giving a reduced rate of £567/m^2. Following the challenge, and after consideration of the available rental evidence, the zone A rate had been reduced to £620/m^2, which became £488.25/m^2 with the application of the allowances. This resulted in the current assessment of £112,000 RV.

15 Mr Horder referred to the Lands Tribunal case of *Lotus & Delta* which indicated that the rent of a property was the starting point in its valuation. He explained that whilst the Valuation Officer held rental evidence for the subject property, rental evidence from Forms of Return was also available for two other nearby properties. Mr Horder considered that the rent for the appeal property was useful as it had been set close to the AVD; however, it had been weighted lower because it was stepped and required some adjustment and also because the rent related to a lease renewal and not a new letting. The appeal property's rent had adjusted to £83,627, which analysed to a zone A rent of £476.94/m^2.

16 Mr Horder referred to his comparable properties at 57 Long Row and 9 Angel Row. These were not subject to 'clean' rents and some adjustments were required which reduced their reliability. That said, Mr Horder considered that these rents carried more weight as they related to new lettings and whilst they had not been set as close to the AVD as that of the subject, they were from only six and seven months post the AVD. When analysed, the rents of the two comparable properties resulted in zone A rents of between £550.42/m^2 and £712.37/m^2.

17 Having regard to his evidence, Mr Horder sought dismissal of the appeal.

Decision and reasons

18 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 Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015, the AVD.

19 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 was 1 April 2017.

20 In this appeal, the rating representative had argued that it would not be unreasonable for the appeal property to be assessed by the overall method of valuation. After consideration of the photographs and the goad plan provided, the panel determined that it should continue to be assessed by the zoning method. This allowed the subject to be valued consistently with others, including the adjacent property which was of a similar size and shape. Any particular disabilities affecting the appeal property could be recognised by the application of specific allowances, where appropriate.

21 The Lands Tribunal judgment in *Lotus & Delta* 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 of other

comparable properties may also be relevant. All of the evidence could then be weighted.

22 As outlined in *Lotus & Delta*, the starting point was 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. Within the evidence, the parties' overall analysis of the subject rent was broadly similar. The parties had calculated different zone A rates because the Valuation Officer then devalued based on an area in terms of zone A before applying the adjustments to reflect the factors affecting the property; the rating representative had devalued based on an area in terms of zone A after already applying the adjustments. The zone A figures provided by the parties for the appeal property are reflective of these analyses. The rating representative had analysed the appeal property's rent in a number of ways. To the five-year review on a straight-line approach, it gave a net effective rent of £84,000, which analysed to a zone A rate of £377.33/m^2 or an overall price of £66,96/m^2. Using the same five-year review period but analysing on a Discounted Cash Flow (DCF) basis using a yield of 7%, gave a net effective rent of £83,601, a zone A rate of £375.53/m^2 and £66.64/m^2 on an overall basis. Further calculations had been undertaken to the break clause at year six, giving a net rent of £85,000 on a straight-line approach, resulting in a zone A rate of £381.82/m^2 or £67.75/m^2 on an overall basis. Analysing to the break clause on a DCF basis, gave a net rent of £84,496 and a zone A rate of £379.56/m^2 or £67.35/m^2 on an overall basis.

23 After due consideration, the panel decided that it should not determine this appeal based on the appeal property's rental evidence in isolation, given the rent had required some adjustment and it did not relate to a new letting transaction. There was also rental evidence available for comparable properties that had been set only six and seven months post the AVD and whilst these rents also required some adjustment, they related to new lettings in the area. In the absence of an established tone, the panel preferred to look at the available evidence in its entirety and weight it accordingly.

24 From the rental evidence provided by the Valuation Officer, the panel found the following:

i. 50-52 Long Row, Nottingham (the appeal property). The rent had been set in March 2015 and needed adjustment to reflect that it was a stepped arrangement. The rent had adjusted to £83,627, which gave an analysed zone A rent of £476.94/m^2. As the rent was not in respect of a new letting the panel weighted it lower.

ii. Bmt & Gnd Flr, 57 Long Row was on the same side of Long Row as the appeal property. It had been subject to a new open market letting for 10 years from November 2015. The rent had required adjustment due to a rent-free period, a stepped rent arrangement and a break clause penalty which was equivalent to three months' rent. Assuming the break clause was exercised, the Valuation Officer's analysis had produced a zone A rent of £550.42/m$^{2;}$ however, when assuming the opposite the rent analysed to £584.89/m^2. This rent had been set only seven months post the AVD and was in respect of a new letting, therefore the panel considered it was good evidence.

iii. 9 Angel Row was situated on the opposite side of the road to the appeal property. It had been subject to a new open market letting in October 2015 and the only rental adjustment required was to reflect a rent-free period. The adjusted rent analysed to a zone A of £712.37/m^2. The panel accepted that this rent was useful as it had been set only six months post the AVD and related to a new letting. However, whilst this property was in a poorer location than the subject, it was likely to have a wider market; given it was a smaller unit with a more regular layout.

25 The Valuation Officer had included in his evidence an assessment summary schedule for properties on Long Row and Angel Row. From this the panel found that properties on Long Row had been valued on zone A rates of between £1,050/m^2 and £540/m^2. The higher rates being applicable to properties closer to Old Market Square. The pattern appeared similar for Angel Row, in that properties closest to Old Market Square had been valued at £550/m^2 and this reduced to £450/m^2 at 9 Angel Row, which was further away. Whilst Mr Gould had argued that a tone had not been established for properties in this area as the assessments had not been tested, the panel found the trend established by this assessment evidence, namely that properties closer to Old Market Square appeared to be more valuable as they were assessed on higher zone A rates, was useful.

26 After observing the photographs and plans provided in the bundle, the panel accepted that the appeal property was in a prominent location on Long Row, close to Market Street, St James Street and Old Market Square, which was the central transport hub for trams and buses. From the goad plan the panel found the subject was better located than both 57 Long Row and 9 Angel Row and therefore it was not unreasonable for the zone A rate applied in its assessment to reflect this. On balance, the panel was not persuaded that the available rental evidence and the trend established by values applied to properties on Low Row and Angel Row supported the zone A rate of £375/m^2 proposed by Mr Gould. The panel considered that the £620/m^2 adopted in the appeal property's assessment by the Valuation Officer was not shown to be unreasonable, which reduced to £488.25/m^2 with the allowances to reflect the non-standard shape of the unit and the changes to the internal floor levels.

27 The rating representative had indicated that if the appeal property was to be zoned, then the condemned area of the basement should be removed from the assessment. Mr Horder had provided photographs taken at the joint inspection and Mr Gould had not objected to their inclusion at the hearing. The photographs showed that the restricted area in the basement was in use as storage. The panel therefore found no reason to exclude this element from the appeal property's valuation.

28 Having regard to the above, the panel confirmed the appeal property's current assessment of £112,000 RV with effect from 1 April 2017. The subject appeal was therefore dismissed.

Date 30 September 2022
Reissued 18 October 2022

Appeal Number CHG100181523

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.

Amended decision in accordance with Regulation 39 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 due to a clerical error. Paragraph 22 is now amended to clarify the basis on which the parties had reached their zone A rates for the appeal property.