THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeal; Lotus and Delta v Culverwell (VO) [1976] RA 141; *Shop and premises; zone A rate; appeal dismissed.*

RE: 18/20 Market Walk, Tiverton, Devon, EX16 6BL

APPEAL NUMBER: CHG100181796

BETWEEN:	Peacocks Stores Ltd	Appellant
	and	
	Mr D Virk (Valuation Officer)	Respondent

BEFORE: Mr A Ramsay (Senior Member)
Dr P Thomson

CLERK: Mr R Gath IRRV Hons

REMOTE HEARING 1 on 16 August 2021

APPEARANCES: Mr S Cronk from Altus Group (Appellant's representative)
Mrs S Shand (Valuation Officer's representative)

Summary of Decision

1. Appeal dismissed. The panel made no change to the rateable value (RV).

Introduction

2. The appeal property was entered in the 2017 rating list as 'Shop and premises' at rateable value £58,500, however, the Valuation Office agreed to reduce the RV to £51,500 effective from 1 April 2017. The rating list has been amended to reflect the new RV. The unadjusted Zone A rate was £280/m^2, however, it was adjusted to reflect the shape of the shop, to a Zone A rate of £266/m^2. There was also an addition for air conditioning. The appellant was seeking a rateable value of £37,250 based on an unadjusted Zone A rate of £200/m^2. It is located in the Market Walk Shopping Centre.

3. 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.

4. 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 position.

5. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, Mr Cronk made an appeal to this Tribunal because he disagreed with the current RV. The appeal to this Tribunal has been made on the grounds that the valuation for the appeal property is not reasonable[1].

6. This is a compiled list appeal so the material day is 1 April 2017. The appeal to this Tribunal was made on 21 May 2021 following the Valuation Officer's Decision Notice of 12 April 2021 in respect of the appeal property (hereditament).

7. Mr Cronk had declared that his firm is on a contingency fee basis. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Cronk's declaration of truth included a statement that he understood and accepted that his duty is to the Tribunal in giving his evidence and he will comply with this as well as the requirements of his professional body regardless of whether or not the evidence supports his client's case.

8. 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).

9. The absence in this decision of a reference to any statement or item of evidence placed before the panel by the parties should not be construed as it being overlooked.

Issues

10. The issue for determination was the rateable value of the appeal property.

[1] Regulation 13A(2) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009.

Evidence and submissions

11. The appellant had provided the Tribunal with both parties' written submissions. The evidence included the following: the appellant's statement of case, a map of the locality, a plan of the building, photographs of the appeal property, and details of his comparable properties, the proposed valuation, a copy of the challenge proposal, the Valuation Office Agency's (VOA) challenge decision notice, copies of correspondence that had passed between the parties and extracts of a number of judgments including *Lotus and Delta v Culverwell (VO)* [1976] RA 141 and *K Shoe Shops v Hardy (VO) and Westminster City Council* [1983] RA26 CA

12. The appeal property was initially held on a lease of £40,000 which commenced in 2013, however the appellant subsequently agreed to a five year Full Repair and Insurance lease at a rent of £28,500 per year from September 2015. Mr Cronk argued that this analysed to a Zone A rate of £154/m^2, although based on his analysis of the passing rents for the following comparable assessments in the locality, he proposed that a rate of £200/m^2 with the 5% allowance for shape was adopted.

13. To support his argument that the RV was incorrect, Mr Cronk provided the following comparable properties:

Property	Area	Rent	Analysed rent	Rateable value
3 Market Walk	93.12m^2	£12,500	£197.66m^2	£19,250
Unit 7 Market Walk	55.49m^2	£8,000	£198.46m^2	£12,750
Units 5 - 6 Market Walk	143.57m^2	£18,000	£188.47m^2	£29,000
8 - 9 Market Walk	316.46m^2	£25,000	£191.53m^2	£41,750
21/22 Market Walk	81.24m^2	£14,000	£221.52m^2	£20,000
2 Market Walk	69.02m^2	£12,300	£219.53m^2	£13,500

14. He also disagreed with the VOA using assessments in Bampton Street as he argued that it was not the same location as Market Walk shopping centre which benefited from passing trade especially as there was a car park located there, and 17 Market Walk which was a supermarket and should not be zoned.

15. He also argued with the accuracy of the Forms of Return for numbers 2, 12-14 and 17 Market Walk for the following reasons:

    a) the lease for 2 Market Walk had been surrendered in March 2015 as according to the landlord, the tenants could not afford the rent, which was then £23,000 per year. It was re-let to another tenant in November 2016 at a rent of £10,250 per year;
    b) 12-14 Market Walk, the landlord confirmed that the lease was for a 20 year term from May 1999 at a rent of £34,000, which was increased to £50,000 in May 2009; and
    c) 17 Market Walk was held on a 12 year lease which commenced in September 2005 at a rent of £77,500. The lease was varied in 2012, but the landlord had valued it on an overall basis and it was therefore not comparable.

16. During questioning, Mr Cronk accepted that his proposed RV of £37,250 would be lower than 8-9 Market Walk, which was smaller than the appeal property, however, this was because some of the shops in Market Walk were wider but not as deep and therefore those properties were adversely affected by having a larger proportion of the property being in Zone A.

17. However, given his analysis of the rent for the appeal property, he contended that the rateable value was too high and asked the panel to allow the appeal.

18. Mrs Shand was representing the VO as advocate and expert witness. She contended that the basket of rents supported the current rateable value for the appeal property.

19. In particular she had analysed the passing rents from the following comparable properties:

Property	Area	Rent	Analysed rent	Rateable value
1 Market Walk	98m^2	£18,000	£320.18m^2	£17,750
2 Market Walk	69.09m^2	£12,300	£287.38m^2	£13,500
12 - 14 Market Walk	281.60m^2	£50,000	£357.21m^2	£43,500
17 Market Walk	1104.40m^2	£92,500	£373.97m^2	£79,050
3 Market Walk	93.12m^2	£12,500	£183.23m^2	£19,250
Units 5 - 6 Market Walk	143.37	£17,500	£183.93m^2	£29,000
Unit 7 Market Walk	54.42	£8,000	£183.27m^2	£13,250
23 Market Walk	22.30m^2	£6,000	£279.27m^2	£6,500
8 - 9 Market Walk	316.48m^2	£16,500	£129.91m^2	£41,750
21/22 Market Walk	81.24m^2	£14,000	£221.48m^2	£20,000
17 Bampton Street	215.10m^2	£22,500	£275.45m^2	£24,250
15 Bampton Street	205.80m^2	£24,150	£332.51m^2	£23,000
13 Bampton Street	83.05m^2	£11,750	£296.45m^2	£11,750

20. Mrs Shand contended that the assessments in Bampton Street were comparable to those in Market Walk as they were opposite the shopping centre and were therefore in the same locality and should be included in the basket of rents.

21. Given all of the above rental evidence, the rents analysed to between £130m^2 to £373.97m^2. As the unadjusted Zone A rate of £280m^2 was within this range, this supported the current rateable value and Mrs Shand asked the panel to dismiss the appeal.

Decision and reasons

22. The task for the panel was to determine the rateable value for the appeal property, which represented a rent that a hypothetical landlord and tenant would agree as at the antecedent valuation date (AVD) of 1 April 2015. The common date was used to ensure that every property was treated in a consistent way; otherwise similar properties would have different rateable values if numerous dates were used as rental values fluctuated over time.

23. There is another important date for rating appeals and that is known as the ‘material day.’ This is the date on which the physical factors had to be taken into account. In this appeal, the material day was 1 April 2017.

24. 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 –
>
> 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; and
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> 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”.

25. The panel firstly considered the rent of the appeal property, this being the starting point in the weighting of evidence as stated in the judgment of *Lotus and Delta v Culverwell (VO)* [1976] RA 141.

26. As at the AVD, the rent for the appeal property was £40,000. Although the lease was renewed in September 2015 at a much lower rent, this did not fit with the rating hypothesis as a new tenant coming ‘fresh to the scene’. Being a larger property, it would also benefit from a quantum allowance. However, the panel concluded that the reduction to the rent was quite significant which suggested that the landlord may have agreed to let the appeal property at a cheaper rent to act as a pull to attract customers to the shopping centre. The panel therefore tested this rent with others in the locality.

27. It noted that the passing rent was similar to the rent for 8-9 Market Walk which was 40% smaller than the appeal property, it was only twice as much as 21/22 Market Walk even though that assessment was very much smaller at 81m^2, and the rent for 2 Market Walk as £12,300 for an assessment at 69m^2. Given the above, the panel concluded that the passing rent commencing from September 2015 was not reliable, preferring the basket of rents in the locality.

28. There was a dispute over the accuracy of the Forms of Return for some of the comparable properties, however, the Form of Return is a legal document and the panel would have expected the VOA to verify the accuracy of the information contained within them especially as Mr Cronk provided a copy of the leases for numbers 2 and 17 Market Walk. However, it applied less weight to the rent for 12-14 Market Walk as the rent commenced in 1999 on upward only rent reviews and 17 Market Walk as there was doubts over how it should have been valued. However, the panel found the rent for 2 Market Walk useful but the lease commenced in November 2016 which was 19 months after the AVD.

29. The panel then turned to the tone of the list. It concluded that a lot of the comparable assessments were not comparable in terms of size. However, after examining the comparable properties, the only ones the panel found to be comparable in terms of size were numbers 8-9 and 12-14 Market Walk and numbers 15 and 17 Bampton Street and even these were approximately half the size of the appeal property. The unadjusted rate for these varied between £191.53m^2 to £332.51m^2. Mr Cronk was seeking a revised RV based on an adjusted rate of £190m^2 which was towards the lower end of this range as he had excluded the assessments in Bampton Street.

30. Turning to the assessments in Bampton Street, the panel had established through questions that Bampton Street was a one way road with parking. Therefore, not only were all the comparable shops in Bampton Street very close to the shopping centre, they would also benefit from passing trade from traffic in addition to the pedestrians that had walked through the shopping centre to Bampton Street. It therefore applied less weight to Mr Cronk's argument that the assessments in Bampton Street should be ignored as they were not comparable in terms of location.

31. Given the above, the unadjusted Zone A rate of £280m^2 was within the range of the Zone A rates of what the panel considered to be comparable properties which supported Mrs Shand's contention that the unadjusted Zone A rate was correct.

32. Mr Cronk had not advanced any argument to suggest that the appeal property suffered from any specific disabilities which may have suggested that the appeal property should be valued at the lower end of the tone of value. Although the plan of the centre did suggest that it was set back from other shops, no evidence was presented to the panel that show that it affected the value.

33. Given the above, the resultant RV of £51,500 did not seem excessive compared to those in the locality and the panel dismissed the appeal.

Date: 8 September 2021

Appeal number: CHG100181796