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: Hobbs, Unit 8, Grand Central, Stephenson Place, Birmingham B2 4BF

APPEAL NUMBER: CHG100274388

BETWEEN:	Hobbs Ltd (Represented by Gerald Eve LLP)	Appellant
	and	
	Dal S Virk (Valuation Officer)	Respondent

PANEL:	Ms L Dubow (Senior Member) Prof P Catterall
REMOTE HEARING:	2 August 2022
CLERK:	Mr J N Massey
APPEARANCES:	Mr J Davies of Gerald Eve LLP for the Appellant. Mr K Sloan for the Valuation Officer.

Summary of decision

1. Appeal dismissed. The panel considered that the existing entry in the Rating List for the appeal property of Rateable Value (RV) £129,000 was not excessive.

Introduction

2. This was a 2017 Rating List appeal. Hobbs, Unit 8, Grand Central, Stephenson Place, Birmingham, B2 4BF (“the appeal property”) had been entered in the 2017 rating list as ‘Shop and Premises’ at a RV of £129,000 with effect from 1 April 2017

3. The challenge proposal was submitted by Gerald Eve LLP on behalf of Hobbs Ltd and was received by the Valuation Officer on 20 May 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 £60,250 was proposed with effect from 1 April 2017.

4. The Valuation Officer issued a challenge case decision notice on 24 September 2021, which stated that based upon the evidence and information available, the rating list entry of £129,000 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 21 January 2022.

6. The appeal hereditament comprises a shop situated on the first floor of the Grand Central shopping centre at Birmingham New Street Station. The survey details and area of the subject property of $176.12m^2$ are agreed by the parties.

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 that statement or item of evidence has been overlooked by the panel.

Issue

8. The issue between the parties concerned the RV of the appeal property and specifically, the zone A rate per m² that should apply. Although the original challenge had sought a revised valuation of £60,250, Mr Davies, for the appellant, provided an amended valuation during the challenge process seeking a reduction to £80,750 RV based on a zone A rate of £870.00 per m². Mr Sloan, for the VO, sought to defend the existing RV of £129,000 which was based on the existing zone A price of £1,400 per m².

Evidence and Submissions

9. Mr Davies appeared on behalf of the appellant as both surveyor-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 Davies' declaration of truth included a statement that he was instructed on a contingency fee basis. 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 the client's case.

10. The panel accepted this expert witness evidence on the above basis as the appeal was not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure Regulations and was 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.

11. In his challenge and appeal, Mr Davies had given details of the rent passing on the subject property, which he stated was £100,000 per annum (pa) effective from 21 July 2015 for a term of ten years. Taking the twelve-month rent-free period and a capital contribution of

£150,000 as an incentive, resulted in a net rent of £59,134 pa which he had analysed to £645.00 per m^2 (Zone A) which he argued indicated that the adopted rate of £1,400.00 per m^2 is excessive and should be reduced. During the challenge stage, Mr Davies had not been able to obtain a copy of the lease containing details of the capital payment of £150,000 paid to the tenant of the subject property by the landlord. He therefore proposed a zone A rate of £870.00 per m^2 which had been calculated without adjusting for the capital contribution and which resulted in a revised RV of £80,750. During the hearing Mr Davies also informed the panel that the effective date of the subject rent was 24 September 2015, and not 21 July 2015 as stated in the challenge.

12. In line with the decision in *Lotus and Delta v Culverwell (VO)* [1976] RA 141 Mr Sloan suggested that the rent on the subject property should be taken as a starting point, and the rent of comparable properties in the locality should also be given weight. He considered that the subject rent was out of line with the rents on similar units in the same shopping centre which had also been assessed at a zone A rate of £1,400 per m^2.

Decision and reasons

13. 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;
>
> 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".

14. 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).

15. 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.

16. 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.

17. Bearing in mind the lack of information regarding the terms of the capital contribution for the subject property, the panel found that the rent on the subject property was not reliable and should be given little weight in determining its correct RV.

18. Mr Sloan had provided details of seven comparable retail properties in Grand Central, which had been let on new leases between five and six months after the AVD, to support the existing rate for the subject property.

Address	Area m^2 (ITZA)	Rent	Date of rent	Adopted value (ZA) /m^2	Analysed rent (ZA) £/m^2
Unit 2A, Grand Central	404.90	£250,000	24/6/15	£1,500	£1,131.56
Unit 2B, Grand Central	380.30	£230,000	24/9/15	£1,500	£1,748.56
Unit 3, Grand Central	271.20	£200,000	24/9/15	£1,500	£1,789.96
Unit 5, Grand Central	65.70	£110,000	1/9/15	£1,400	£1,510.78
Unit 6, Grand Central	112.40	£120,000	1/9/15	£1,400	£1,616.47
Unit 7, Grand Central	111.20	£125,400	1/9/15	£1,400	£1,856.48
Unit 9B, Grand Central	156.00	£155,000	24/9/15	£1,400	£1,824.09

19. The panel understood that Unit 2A, 2B and 3 were located closer to the John Lewis department store in the same shopping centre, which accounted for the higher adopted rate than the subject property. The remainder of the units cited by the respondent as comparable were adjacent to the subject property and the panel considered that they provided a good comparison in terms of location.

20. The appellant had argued that Units 5, 6, 7 & 9B were all smaller than the subject property and the appellant would not be in the market for such a property, and therefore a different market existed for smaller retail units in the centre. In considering this, the panel was aware that the rating hypothesis relates to the rent that would be agreed by a hypothetical tenant, so whether or not the appellant would bid on a smaller property is not relevant. Whilst there may be an element of quantum with regards to some of the units in the shopping centre, the panel did not consider that this was demonstrated by the rental evidence provided by the respondent, and no rental evidence had been provided by the appellant to show this.

21. The rents of Units 5, 6, 7 & 9B, with an adopted value of £1,400 per m^2 were analysed between £1,510.78 to £1,824.09 per m^2 and the panel considered that this strongly indicated that the adopted rate for the subject property of £1,400 was not unreasonable.

22. Mr Davies had referred to the reason that there had been no challenges made against the assessments of the respondent's comparable properties as being that there is an ongoing Group Pre-Challenge Review for Grand Central. However the panel was not inclined to place any weight on this as it had not been provided with details of the grounds for this review, and clearly the appellant had not deemed it appropriate to engage with this review.

23. Having considered both parties' evidence and the rental analysis for properties in the locality, the panel concluded that the unadjusted rate of £1,400 adopted by the respondent

was supported by the basket of rental evidence and was fair and reasonable. The appeal is therefore dismissed.

Date: 30 August 2022

Appeal number: CHG100274388

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.