THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeals; 2017 rating list; Challenge against Compiled List entry; Shop and premises; Allowance sought for disabilities related to Grade 1 listing of subject property; rent passing on subject property; panel found that weight of evidence supported a reduction in the assessment of subject property; Decision: Allowed in part.

RE: 4 Holborn, London, EC1N 2LL

APPEAL NUMBERS: CHG100313953

BETWEEN: Lipman and Sons — Appellant

(Represented by Jones Norris Adams Chartered Surveyors)

and

Andrew Ricketts (Valuation Officer) — Respondent

PANEL: Mr J Rockliff (Senior Member)
Ms L Hussein-Venn

CLERK: James Massey

REMOTE HEARING: 17 June 2022

APPEARANCES: Mr T Emlyn Jones of Jones Norris Adams for the appellant.
Mr C Cates for the respondent.

Summary of decision

1. Appeal allowed in part. The panel confirmed the Rateable Value (RV) of 4 Holborn, London, EC1N 2LL at £50,500 with effect from 1 April 2017.

Introduction

2. This was a 2017 Rating List appeal. 4 Holborn, London, EC1N 2LL (“The subject property”) had been entered in the 2017 Rating List as ‘shop and premises’ at a RV of £57,500 with effect from 1 April 2017. As this was a compiled list appeal the material day was also 1 April 2017.

3. The challenge proposal was submitted by JNA Chartered Surveyors on behalf of Lipman and Sons and was received by the Valuation Officer (VO) on 12 June 2020. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was wrong and proposed a revised RV of £47,500 with effect from 1 April 2017.

4. The VO issued a challenge case decision notice on 10 June 2021. The VO's decision was to treat the appellant's challenge as not well-founded, but the VO conceded that a 5% allowance was warranted due to the width to depth ratio of the subject property, which resulted in a reduction in the RV to £54,500 in the VO's challenge decision.

5. 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.

Preliminary Issue

6. On the day before the hearing, an application for postponement was received from Mr Cates on behalf of the respondent on the grounds that the caseworker who was due to present the case on behalf of the respondent had been involved in an accident with a motor vehicle and was unable to attend.

7. Postponement of the appeal was not granted at this stage as all the evidence had been exchanged and it is common for the respondent to assign caseworkers shortly before a hearing. This was also the second listing of this appeal, and it was not in the interests of justice to delay its determination. Mr Cates was invited to the remote hearing to make an oral application for the panel to adjourn the appeal, or to present the case on the respondent's behalf.

8. At the hearing, Mr Cates explained that Ms Castle had been dealing with the appeal, but she had been injured in a collision with a car on 15 June 2022. Mr Cates had been informed of this on 16 June 2022 and as he did not consider he had sufficient knowledge of the appeal property, made an application for a postponement at the earliest opportunity. He considered that whilst he had read Ms Castle's submission, he was unfamiliar with the subject property or its locality and as the appeal related to factual matters regarding the appeal property, he believed that he would not be able to present any expert evidence and could act as advocate only. He sought an adjournment of the appeal either until Ms Castle was well enough to attend a remote hearing, or another caseworker had gained sufficient knowledge of the appeal property in order to present the case.

9. Mr Emyln Jones stated that the appellant would be disadvantaged by a further adjournment of this appeal due to the time he had spent preparing for the hearing and the time he had had to set aside for the hearing. He referred to the frequency with which caseworkers are assigned to present appeals on behalf of the respondent at very short notice and considered that Mr Cates would have had sufficient time to become conversant with the contents of the hearing bundle – to which both parties' presentations would be limited to in any case.

10. The panel considered that Ms Castle had become unavailable at a very late stage before the hearing and through unforeseen circumstances. However, it was very aware that it is common practice for the respondent to assign caseworkers to present appeals at the last minute. Although Mr Cates had referred to Ms Castle's specific knowledge of the subject property and its locality, the panel, having read the evidence bundle, could find very little

specific reference to the subject property in the respondent's submission and considered that Mr Cates would be more than capable of presenting the evidence.

11. Having considered all the circumstances, including balancing the overriding objective of the Tribunal to deal with cases fairly and justly with the need for litigation to be conducted efficiently and at proportionate costs, the panel considered that it was in the interest of justice to proceed with the appeal.

Issue

12. The issue between the parties concerned the RV of the subject property and, specifically, whether allowances totalling 17.5% were warranted.

13. All relevant factual information regarding the subject property, including the area, was not disputed by the parties.

Evidence and Submissions

14. As Mr Emlyn Jones 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).

15. It was established that Mr Emlyn Jones' company would receive a conditional fee or some other success related arrangement if the rateable value was reduced as a result of the panel's decision.

16. However, Mr Emlyn Jones declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and that 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.

17. 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.

18. Mr Emlyn Jones was not challenging the zone A rate of £1,750 per m^2 adopted by the respondent for the subject property, however he considered that the passing rent on the subject property of £47,500 pa at the antecedent valuation date supported allowances totalling 17.5%; 7.5% for the shape of the subject property and 10% for the effects of it being situated within a grade 1 listed building.

19. Although the VO had conceded that an allowance of 5% was warranted due to the width to depth ratio of the subject property, Mr Emlyn Jones stated that the whole of the retail space in the subject property consisted of zone A space, whereas this was not the case with the comparable property referred to by the VO. Mr Emlyn Jones referred to an allowance of 13% applied to 53 New Oxford Street, which was similar in shape to the subject property and was a much more modern Grade 2 listed building.

20. Mr Emlyn Jones stated that he was seeking an allowance of 10% not for the listed status of the subject property, rather the effect of its Grade 1 listing on its use and the costs of repair. He described the building containing the subject property as one of the oldest in London, dating back to circa 1585. He referred to the shopfront of the appeal property, which consisted of stall risers that restricted the usable space. No fixtures can be attached to the walls or electrical work carried out without Listed Building Consent, and all displays must therefore be free-standing. The subject property is also of an unusual shape, and the positioning of the entrance doorway and stairs to the basement mean that display space cannot be used to an optimum.

21. He stated that the tenant is responsible for repairs of the subject property, and due to the age of the building, this involves an onerous service charge which includes contributions to the upkeep of the fabric of the building and other common parts. He referred to a basic service charge of £1,288.27 being payable per quarter between 2013 and 2017, although as this charge is not capped, some years this has been almost six times higher. He considered that knowledge of this unpredictable liability and the restrictions on the use of the subject property would be factors which would affect the hypothetical tenant's bid.

22. The respondent agreed that a 5% width to depth allowance was appropriate to reflect the fact that the shape of the subject property resulted in a high proportion of its retail space being in Zone A. The level of allowance was in line with that applied in respect of Ground Floor, Unit 1 at 326-333 High Holborn.

23. With regard to an allowance for the Grade 1 listing of the subject property, the respondent stated that there was no precedent for the granting of such an allowance, and the age and unique character of the subject property was attractive to some tenants and could be seen as a positive factor rather than a negative one. Mr Cates considered that this was supported by the fact that there had been very little turnover at the subject property or other properties within the same building over the years.

24. The respondent did not consider that the rent passing on the subject property was indicative of the rent that would be agreed in accordance with the statutory assumptions at the AVD and therefore asserted that it did not support the total allowances of 17.5% sought by the appellant.

25. Whilst the respondent acknowledged that the zone A rate of £1,750 per m^2 applied to the subject property was not being challenged, it was felt appropriate to refer to the analysed rents of other properties in the same scheme as the subject property which had an adopted rate of £1750 per m^2, which were between and £1,907.99 and £2,941.67 per m^2. The respondent considered that these transactions, between 1 December 2015 and 25 June 2016 supported the rate applied to the appeal property.

26. Mr Cates did not consider that the appellant had provided sufficient evidence to show that the hypothetical landlord would offer a 17.5% reduction on the rent due to the factors described by the appellant.

Decision and reasons

27. 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 of the Local Government Finance Act 1988).

The date of the hypothetical rent was 1 April 2015 (antecedent valuation date or AVD). Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 (material day) for this appeal. When assessing the RV of any property, rating law also requires that the property must be assumed to be ‘vacant and to let’, and in the state set out in Schedule 6 of paragraph 2(7) of the Act, in relation to both the physical nature of the property and its mode or category of use.

28. The panel had regard to the Lands Tribunal judgment of *Lotus & Delta Ltd v Culverwell (VO)and Leicester City Council* 1976, as referred to by the Respondent. This case had established six propositions, which gave clear guidance to be followed when assessing rateable value, namely:

(1) ‘Where the hereditament which is the subject of consideration is actually let that rent should be taken as the starting point.

(2) The more closely the circumstances under which the rent agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of Gross Value in s.19(6) of the General Rate Act 1976 the more weight should be attached to it.

(3) Where rents of similar properties are available they too are to be properly looked at through the eye of the valuer in order to confirm or otherwise the level of value indicated by the actual rent of the subject property.

(4) Assessments of other comparable properties are relevant. When a valuation list is prepared these assessments are to be taken as indicating comparative values estimated by the Valuation Officer. In subsequent proceedings on that list therefore they can properly be referred to as giving an indication of that opinion.

(5) In light of all the evidence an opinion can then be formed of the value of the appeal hereditament, the weight to be attributed to the differing types of evidence depending on the one hand on the nature of the actual rent and on the other hand, on the degree of comparability found in other properties.

(6) In those cases 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.’

29. Mr Emlyn Jones argued that the allowance of 5% for the shape of the subject property proposed by the respondent was not sufficient, and a total allowance of 17.5% for the reasons he had described was reasonable as it would bring the RV into line with the rent passing on the subject property of £47,500 pa.

30. He stated that the lease on the subject property came to an end on 24 March 2012, however, the tenant remained in occupation and was holding over under Part II of the Landlord and Tenant Act 1994 until 14 February 2020, when the lease on the subject property was surrendered. He stated the rent under the continuation was £47,500 pa until 31 December 2017, then £62,500 from 1 January 2018 to 14 February 2020. He considered that the tenant was holding over at a rent of £47,500 at the AVD and this continuation tenancy was on very similar terms to the rating hypothesis, with the landlord having the opportunity to increase the rent if he wanted to.

31. Mr Cates referred to the passing rent on the subject property of £47,500 and stated that he had established that this was agreed in 2007. He did not therefore consider that this rent, represented the hypothetical rent that would be agreed eight years later at the AVD. He stated that there was insufficient evidence regarding the terms of the continuance and no evidence from which it could be concluded that this passing rent reflected the market rent at the AVD.

32. Having considered the parties' arguments, the panel was of the opinion that the passing rent was agreed too far from the AVD and there was insufficient evidence with regard to the continuance of the lease for it to place any weight on it in determining the correct RV for the subject property.

33. The panel had regard to the comparable properties put forward by the respondent in support of the zone A rate applied to the appeal property. Although this was not in dispute, the panel considered that the respondent's comparable properties were much more modern, purpose-built retail units, of a more regular shape and with fully glazed frontages. It was therefore unable to place any weight on the respondent's argument that the analysed rents on these units indicated that the current RV of the subject property was not excessive.

34. The only evidence of an allowance specifically due to excessive width to depth ratio was that put forward by the respondent of Ground Floor, Unit 1 at 326-333 High Holborn where a 5% allowance had been applied. The panel therefore considered that the allowance proposed for the excessive width to depth ratio of the subject property by the respondent of 5% was sufficient.

35. The panel, having considered the evidence put forward by the parties, considered that the unique character and age of the subject property can be seen as both a positive and negative. However, it was of the opinion that the disadvantages of the subject property described by Mr Emlyn Jones outweighed any particular advantages discussed by the respondent. The panel considered that the disadvantages of the appeal property, related to its listed status, warrant an allowance in addition to that applied for its excessive width to depth ratio.

36. Although not as old as the subject property and with a different grade of listing, the panel felt that 53 New Oxford Street was a good comparable to the subject property in terms of its shape, both in terms of its width to depth ratio and its irregularity. Whilst it noted that the 13% allowance had been agreed by the respondent in 2005, this was still in place in the current list, so the panel considered that the same circumstances still prevail. The panel considered that this allowance reflected the shape of 53 New Oxford Street and its other disadvantages caused by its listed status, and that a similar total allowance was therefore applicable to the subject property. This would be broken down as of 5% for the excessive width to depth ratio of the subject property and a further 8% due to the disadvantages caused by its listed status.

37. From the submissions and comparable evidence presented, the panel was satisfied that the current assessment of the subject property was excessive, and that a further 8% allowance in addition to that of 5% proposed by the respondent was warranted, resulting in a reduction in the RV of the subject property to £50,542 (rounded to £50,500). The appeal is therefore allowed in part.

Order

38. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry for 4 Holborn, London, EC1N 2LL to £50,500 with effect from 1 April 2017, within two weeks of the date of this Order.

39. The ratepayer is also entitled to a refund in full of the fee paid in accordance with regulation 13E (1)(a) of the Non-Domestic Rating (Alteration of Lists and Appeals)(England) Regulations 2009. The refund will take around six weeks to process.

Date: 13 July 2022
Appeal number: CHG100313953

Appeal rights

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.