THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeal; Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141; Shop *and premises; main space price; appeal dismissed.*

RE: 22 Lion Yard, Cambridge CB2 3NA

APPEAL NUMBER: CHG100319825

BETWEEN:	Mr Z L T/A Bubble Tap Ltd	Appellant
	and	
	Ms J Moore (Valuation Officer)	Respondent

PANEL: Mr A Jobanputra (Presiding Senior Member)
Mr M Smith (Senior Member)

CLERK: Mr R Gath IRRV (Hons)

REMOTE HEARING 1 on 12 May 2022

APPEARANCES: The Appellant
Miss A Vujatovic (Valuation Officer's representative)

Summary of decision

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

Introduction

2. This appeal had been brought in respect of the following: 22 Lion Yard, Cambridge CB2 3NA which was entered in the 2017 rating list as 'Shop and premises' at RV £44,750 effective from 1 April 2017 based on an unadjusted zone a rate of £1,225/m^2. The appellant was seeking an RV of £20,000 based on a zone a rate of £545.55/m^2.

3. The appeal property was built in 1976 and is of brickwork construction, located within the Lion Yard Shopping Centre but away from the main shopping areas. It has an area of 65m^2, 36.66m^2 in Terms of zone A (ITZA). It

was initially held on an open ended lease effective from 1 November 2017 at a yearly rent of £20,000, however, the appellant had recently resigned a new open ended lease at a yearly rent of £12,000.

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

5. The appeal to this Tribunal was made on 1 November 2021 following the Valuation Officer's Decision Notice of 14 July 2021 in respect of the appeal property.

6. There was a preliminary issue in that the appellant provided some additional evidence, this being confirmation of the occupancy status of other units that were located close to the appeal property. The appellant had received this evidence from the managers of the shopping centre shortly before the hearing. Miss Vujatovic was in agreement to it to be admitted.

7. In order to assist the appellant and with the agreement of all parties, the panel varied its model hearing procedure and invited the Valuation Officer's representative to present her case first.

8. 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 having been overlooked.

Issues

9. The issue for determination is the rateable value of the appeal property.

Evidence and submissions

19. Miss Vujatovic was representing the VOA as advocate and expert witness. The VOA had resisted the challenge as the current lease for the appeal property had been agreed over two years after the AVD. Furthermore, the landlord was looking to redevelop the locality and suggested that it was a low rent as the landlord may require the appellant to vacate the appeal property at short notice. This made the rent unreliable.

20. As the respondent VO considered the rent for the appeal property to be unreliable, it provided the following basket of rents which supported the current rateable value and provided the following comparable properties:

Property	Area (ITZA)	Analysed rent	Unadjusted main space price	Rateable value
22 Lion Yard (Appeal property)	36.66m^2	£499.18/m^2	£1,225/m^2	£44,750

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

23 Lion Yard	35.77m^2	£1,258.09/m^2	£1,225/m^2	£43,750
25 Lion Yard	41.38m^2	£1,282.62/m^2	£1,225/m^2	£48,000
30 Lion Yard	58.39m^2	£2,012.33/m^2	£1,650/m^2	£97,000
1 Lion Yard	61.73m^2	£2,149.47/m^2	£2,000/m^2	£124,000
5 Lion Yard	53.89m^2	£1,979.37/m^2	£2,000/m^2	£108,000
4 Lion Yard	55.07m^2	£2,269.84/m^2	£2,000/m^2	£110,000
24 Lion Yard	29.73m^2	£1,076.35/m^2	£1,225/m^2	£36,250

21. Given all of the above comparable properties, the respondent VO contended that these supported the current unadjusted rate for the appeal property of £1,225/m^2 and that the resultant RV of £44,000 was reasonable. Miss Vujatovic asked the panel to dismiss the appeal.

22. 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, external photographs of the appeal property, a copy of the challenge proposal and the Valuation Office Agency's (VOA) challenge decision notice.

23. He argued that the appeal property was located on a pedestrian passageway which consisted of five shops, outside of the main Lion Yard's shopping centre and that that the rents for this location were less than those in other locations within the shopping centre.

24. In support of this, the appellant argued that the occupiers of two of the units that were located close to the appeal property were a national chain, negotiated via their head office and he argued that they were willing to pay inflated rents for brand recognition and therefore he considered that the rents for those two units were unreliable.

25. He also argued that no allowance had been made for the appeal property being a small independent business, as the VOA had used the rents from large chains that had agreed leased in the beginning of 2010 and the VOA had not reflected the vacant units, the lower rents and the shifted property market since then.

26. The appellant also disagreed with the VO's contention that the rent was lower due to the redevelopment of the shopping centre. Although part of the shopping centre was redeveloped, it was another part of the shopping centre and the appellant stated the location where the appeal property was located was not going to be redeveloped. He also argued that the shopping centre had deteriorated over the past 10 years and that it was passed its 'hey day' as units 20/21 and 23 Lion Yard had been vacant for the last nine years and had been since the AVD.

27. During questions, the appellant confirmed that he could be given two months notice to end the lease, but, he could end it earlier without any penalty if he was to relocate to another unit within the shopping centre. He also confirmed that the new lease was for £1,000 per month, but it could be lower if the rent included a percentage of his sales.

28. In response to the appellant's argument, Miss Vujatovic contended that there was still a possibility that the shopping centre where the appeal property was located could still be redeveloped.

Decision and reasons

29. 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.

30. 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 have to be taken into account. In this appeal the material day was 1 April 2017.

31. 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
>
> 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".

32. The Lands Tribunal judgment in *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141 provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property is considered to be the correct starting point but, where available, rents on similar properties are also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence can then be weighted.

33. Although the rateable value should be the amount equal to the rent, the lease for the appeal property commenced in November 2017, which was two and a half years from the AVD. The respondent had also argued that it was not reliable due to the nature of the lease and therefore the panel tested this rent with the VO's comparable properties.

34. The respondent had produced a number of comparable properties. Most of the rents were lease renewals whereas the rating hypothesis is that it should be a new tenant coming fresh to the scene. But, the panel noted that the lease renewals had commenced in 2014 and 2015 which were closer to the AVD than the rent for the appeal property.

35. However, the panel noted that the lease for 5 Lion Yard was a new lease that commenced within four months of the AVD. It had been adjusted to £106,668 per year. Although the property was 15m^2 larger than the appeal property and it was located in a different location within the shopping centre.

36. The rent for 5 Lion Yard, together with the VOA's basket of rents, suggested that the rent for the appeal property, was not reliable enough on its own to determine the rateable value.

37. Whilst the appellant had argued that some of the units within the locality were empty and the rents for the adjoining units for those that were occupied were not reliable, as the occupier wanted a presence within the shopping centre and that the head office negotiated the rent, the appellant provided no evidence to prove that the rents for those units were unreliable or were higher compared to other similar units.

38. Furthermore, although the appellant argued that he was a small independent business, the panel cannot take into account of who the occupier of a unit was.

39. Given the above, although the appellant had presented a number of arguments to suggest that the rateable value was incorrect, the panel could not apply any significant weight to these, preferring the VOA's basket of rental evidence.

40. Although it was clear from the photographs that the appeal property was not in the main shopping centre, the VO had explained that the zone A rate of £1,225/m^2 was for those units that were not in the main centre as demonstrated by the zone A rates of £1,650/m^2 and £2,000/m^2 respectively, for the main areas of the shopping centre.

41. As the Zone A rate of £1,225/m^2 for the appeal property was within the range of the Zone A rates for the comparable properties, it further supported the respondent's contention that the unadjusted Zone A rate was correct.

42. Given the above, the panel concluded that resultant RV of £44,750 did not seem excessive compared to those in the shopping centre and the panel dismissed the appeal.

Date: 10 June 2022

Appeal number: CHG100319825