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 allowed in part.*

RE: 19 Central Approach, Letchworth Garden City, Hertfordshire SG6 3DL

APPEAL NUMBER: CHG100333887

BETWEEN:	T J Morris Ltd	Appellant
	and	
	Ms J Moore (Valuation Officer)	Respondent

PANEL: Mr R Patel (Senior Member)
Mr M Bhatti

CLERK: Mr R Gath IRRV Hons

REMOTE HEARING 3 on 18 May 2023

APPEARANCES: Mr A Allen from The Beattie Partnership (Appellant's representative);
Ms V Lynch (Valuation Officer's representative)

Summary of decision

1. Appeal allowed. The panel concluded that the main space price should be reduced to £66.15 per m^2. The resultant rateable value (RV) was £84,500.

Introduction

2. The appellant had made a challenge against the accuracy of the compiled list assessment in the 2017 Rating List, by way of a proposal that he served on the Valuation Officer on 25 June 2020. After considering the proposal and evidence submitted during the challenge period, the Valuation Officer (VO) decided that the proposal was not well founded and refused to alter the existing assessment of £94,000 RV. A decision notice to that effect was served on the appellant on 28 July 2021 and his representatives then appealed the VO's decision to the Tribunal on 2 November 2021, on the grounds that the current valuation for the

hereditament was not reasonable, under Regulation 13A of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009.

3. The appeal property was a shop and premises within the Garden Square Shopping Centre with an agreed gross internal area (GIA) of 1,282.90m².

4. Mr Allan had declared that he was employed by The Beattie Partnership as a consultant. However, The Beattie Partnership is employed 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 Allan'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.

5. 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).

6. This document is not and does not purport to be a full verbatim record of proceedings.

Issue

7. The issue in dispute before the panel was the correct tone of value to be applied to the appeal property. Mr Allen had initially sought a reduced entry of £39,750 RV based on a tone of value of £31 per m². However, at the commencement of the appeal, Mr Allen sought a reduced entry of £41,000 RV based on a tone of value of £32 per m². On behalf of the respondent, Ms Lynch defended the Valuation Officer's existing assessment of £94,293 based on a tone of value of £73.50 per m².

Evidence and submissions

8. The evidence bundle before the panel comprised all of the evidence disclosed and exchanged during challenge which included rental evidence and its analysis, the parties' skeleton arguments, location maps and a photograph of the appeal property.

Decision and reasons

9. In the case under consideration, the panel had analysed the competing evidence having regard to the authoritative guidance in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA141.

10. The starting point for consideration was the actual rent passing on the appeal shop. The rent of £99,300, effective from 24 June 2017 was a rent renewal. The lease had been taken on from Marks and Spencer who had been the previous occupier. However, following a new lease that had been negotiated by the appellant company, the rent on the new lease was £39,750 effective from 29

September 2019. Mr Allen argued that the rent passing on the appeal property was the best evidence, and the tribunal need not look any further.

11. However, the panel applied little weight to the rental evidence for the appeal property as it was too far from the AVD to be reliable.

12. In terms of indirect rental evidence, the VO referred to the rents passing on numbers 16-20 Central Approach which was £136,520 per year following a rent review on 29 September 2014; 22-24 Commerce Way which had a passing rent of £125,000 following a rent review in November 2014, 27-33 Commerce Way which had a rent passing of £132,000 following a lease renewal in July 2016 and 11 Eastcheap. These were all Broadley similar in size apart from 11 Eastcheap which was approximately double the size of the appeal property and therefore not reliable. Furthermore, it was outside of the shopping centre and therefore the panel applied little weight to the rent for 11 Eastcheap.

13. Both parties had also referred to the assessment for 17 Central approach. The RV was £89,500. Although it was slightly larger, the panel applied most weight to this assessment as it had been settled following a challenge and had a Zone A value of £440 per m² which Ms Lynch had calculated as £61.79 per m² based on an overall basis. The LO had also allowed a 15% allowance due to the size of that unit.

14. However, all of the units had been valued using the zoning method, whereas the appeal property was valued on an overall basis. To assist the panel, the VO had converted two of these from zoned to a GIA which analysed to £107.54 per m² and £105.71 per m². Whilst Mr Allen had argued that it was not correct to do this, given the lack of properties valued on an overall basis, the panel found it helpful as it demonstrated to the panel that the value of £73.50 per m² for the appeal property was not unreasonable.

15. Mr Allen had also argued that the appeal property was located away from the main shopping centre on an alleyway to the car park and he considered there to be a lack of passing trade which would affect the rental bid and that there was little demand for the unit due to the lack of footfall and was reflected in the rent for the unit.

16. As it was the only entrance from the car park to the shopping centre, (although there were other entrances for pedestrians), the panel did accept that not all visitors to the shopping centre would drive there and concluded that the appeal property would suffer from reduced footfall compared with the assessment for 17 Central approach, although from the plan of the shopping centre that unit was also towards the end of Commerce Way. But, without any evidence to demonstrate that there was significantly reduced footfall in that part of the shopping centre, the panel was not persuaded that the lack of footfall that would reduce the unit to the value that Mr Allen was seeking (£32 per m²).

17. Without any additional evidence, the panel concluded that the value should be valued 10% lower to reflect the slightly poorer location of the appeal property and determined that a tone of value of £66.15 per m² (£73.50 x 10%) was applicable, resulting in a valuation of £84,500 RV (1,282.9m² x £66.15 = £84,864 say £84,500 RV).

18. The appellant's grounds of appeal were therefore made out as the existing assessment was unreasonable. The appeal was therefore allowed in part.

Order

19. Under the provisions of regulation 38(4) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to reduce the entry in the rating list to rateable value £84,500 with effect from 1 April 2017.

20. Under regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

Refund of appeal fees

21. As the grounds of the appeal have been made out, a refund of the paid fee will now be arranged (Regulation 13E of the NDR Alteration of Lists & Appeals Regs) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

Date: 7 June 2023

Appeal number: CHG100333887

Right of further 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.