THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; challenge against compiled list entry; advertising right and premises; accuracy of rateable value; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal dismissed.

RE: Advertising Site at Gloucester Arcade, London SW7 4SF

APPEAL NUMBER: CHG100337935

BETWEEN:	London Lites Ltd	Appellant
	and	
	Mr A Ricketts (Valuation Officer)	Respondent

PANEL: Mr WJ Read (Presiding Senior Member)
Mrs NC Yang (Senior Member)

CLERK: Miss F Willson

REMOTE HEARING ON: 31 October 2022

APPEARANCES: Mr R Wackett (the representative for the appellant)
Mr C Cates (on behalf of the Valuation Officer).

Summary of decision

1. Appeal dismissed. The panel confirmed the rateable value (RV) of Advertising Site at Gloucester Arcade, London SW7 4SF (subject property) at £18,000 with effect from 1 June 2019.

Introduction

2. This was a 2017 rating list appeal on the subject property which had been entered in the 2017 Rating List as ‘advertising right and premises” with an RV of £18,000 with effect from 1 June 2019.

3. The appeal arises from a challenge proposal made by Montagu Evans on behalf of London Lites Ltd in respect of the entry in the rating list of £18,000 RV with effect from 1 June 2019. The appellant sought a revised assessment of £7,875. After considering the merits of the challenge, the Valuation Officer (VO) determined that it was not well founded and a decision notice to this effect was issued on 14 December 2021. The appellant made an appeal to this tribunal against the decision notice, received on 12 April 2022, on the grounds that the existing RV was not reasonable.

4. Mr Wackett appeared on behalf of the appellant as both 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 Wackett stated that he was not instructed under a conditional fee arrangement. 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 his client’s case.

5. Mr Cates appeared on behalf of the Valuation Officer as advocate and an expert in general rating matters in the inner London area.

6. The subject premises comprised of two wall mounted six sheet, small format advertising site with digital display mechanisms inserted. They are positioned at either side of the entrance to Waitrose in the Gloucester Arcade situated on Cromwell Road in the London Borough of Kensington. They are visible to traffic heading to and from the M4 and Heathrow Airport. There is also a high level of pedestrian traffic passing the site as it is located amongst many popular shops and close to hotels. Cromwell Road is the main road through the most expensive residential part of London.

7. Mr Cates attended the hearing by an audio only connection but confirmed that he was content that he could fully participate in the hearing by that method. The panel was satisfied that neither party had been disadvantaged by the audio only connection and that both panel members were able to hear Mr Cates’s presentation in full.

8. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the evidence presented was fully considered by the panel before coming to its decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

Issue

9. The issue for the panel to consider was the correct RV for the assessment.

Evidence and Submissions

10. Mr Wackett submitted a bundle of evidence which included photographs and details of the subject property, his revised RV calculation, copies of correspondence between the parties,

a rebuttal statement and the issues in dispute. He submitted that the appeal should be allowed and the RV on the subject property should be reduced to £7,875.

11. Mr Cates referred the panel to the challenge application and decision, data for footfall passed the subject property and ‘hits’ they receive. He submitted that the RV of £18,000 was reasonable and asked the panel to dismiss the appeal.

Decision and Reasons

12. 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 (the 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 (the 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.

13. 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 1967 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.’

14. The assessment of a digital advertising site is the right to advertise as defined under section 64(2) of the Local government Finance Act 1988. Only the right to advertise is valued and the digital mechanism is not included in the RV.

15. Mr Wackett explained that the rent for the site was set at 50% of the profit generated by it. The rent had been agreed on 1 June 2019 for a term of 10 years and so was within the definition of the rating hypothesis. The site generated a rental of £8,000 pa but the net profit was reduced due to Coronavirus and the resulting lockdowns. He explained to the panel that the rental figure for an advertising site was established in a number of ways which led to it being an 'imperfect market'. These included the rent consisting of a set rent, a profit share or both. He had adjusted the rent paid by inflation of -5% to take it back to the AVD and then taken the structure costs as £6,280 @ 4.4% being £276 giving a total rental figure as at the AVD of £7,876 say £7,875.

16. The panel noted that the rent was agreed four years after the AVD and that there was also a revenue share element which the Coronavirus may have depressed. In view of this, the panel did not consider it to be the best evidence.

17. Mr Wackett put forward supporting evidence to support the rent on the site itself of other advertising sites within a similar locality:

Address	RV	Rental
*Advertising Site at Gloucester Arcade, Cromwell Road, SW7 4SF	18,000	50% of net profit (circa £8,000 pa)
Daylite LED Media Ltd Adj 469-475 The Highway, London, E1W 3HN	18,000	£12,000 or 50% of net profit
Advertising Site Singkit Adj 182 Tower Bridge Road, London, SE1 2AD	19,250	£7,500 plus minimum uplift of £2,500 pa
Advertising Site at 111 Pentonville Road, London, N1 9JP	20,000	50% of revenue (circa £12,000pa)
Advertising Site at 118 Cromwell Road, London, SW7 4ET	20,000	50% of net profit (circa £10,000 pa)
Advertising Site at Swandon Way (NR R/O 4-6 Morie St) Swandon Way London, SW18 1SP	20,000	£7,500 plus 20% net profit (total circa £12k pa)
Advertising Site, Flank Wall 462 Bethnal Green Road, London, E2 0EA	20,000	£5,000 pa

*subject property

18. Mr Wackett drew the panel's attention to the above sites having varying methods determining the rent at these different advertising sites in London with one being on the same road as the subject property. He explained that the rent is also not connected with the

size of a site as it also took into account the tenant's position, competition in the area and most clients preferred to have a mixed portfolio of sizes. Small sites next to pavements or on forecourts or shopping centres were likely to attract more customers than large ones on the side of a road. The best indication, in his opinion, was therefore the rent on the site.

19. The panel noted that the comparable properties all paid similar levels of rent and had similar RV's to the subject property. It noted that the methods of setting the rent were different for each comparable property but the resulting rents were all between £7,500 and £12,000, the RV's were between £18,000 and £20,000 and the panel found that this created a tone for advertising rights with similar rents having a similar RV.

20. Mr Wackett commented as follows on the comparable properties presented by the VO :

    a. The site at Cromwell Road was a larger site being a 48 sheet site. It was 3 metres high and 6 metres wide and so was considered a large format site unlike the subject property which was a small format site. It was also in a different type of location being a roadside location and was therefore not a comparable property for the subject property and he submitted that no weight should be given to this assessment.

    b. The site on the Sainsbury's car park was a six sheet site and had not been challenged but when Mr Wackett had been to look at it, he had been unable to find it. He did find two sites but they were not digital sites, adding that the digital mechanism was not rateable. The panel did not consider them to be the most useful comparable sites.

    c. The sites on Swandon Way and Holland Road had their RV determined by the rent and so, he argued, the same methodology had used that he submitted should be used when calculating the RV on the subject property.

    d. The Highway site was a larger structure being a 32 sheet site, was on a busy main road and so was again in a different type of location to the subject property although the RV did follow the rent.

21. The panel was aware that a comparable property should be a similar size and in a similar location to the subject property otherwise it would be like 'comparing apples with pears'.

22. Mr Wackett submitted that the argument put forward by Mr Cates that the footfall and passing traffic were relevant to the value of the site had no supporting evidence in the arena of advertising sites. Also, the fact that the subject property site was on either side of the entrance to a 'common supermarket' did not increase its value in connection with rating. The rental was, he submitted, the best evidence when determining an RV.

23. Mr Cates drew the panel's attention to the comparable advertising sites in a similar locality:

Address	Effective date of rent	Rent	Assessed unit value	RV
* Advertising Site at Gloucester Arcade, Cromwell Road, SW7 4SF 7	1 June 2019	£8,000	£18,000	£18,000

Adj Swallow International Hotel, Cromwell Road SW7 5BY	1 January 2019	£52,500	£19,750	£19,750
Clear Channel, Digital Advertising at Sainsburys, Cromwell Road, SW7 4EJ			£6,000	£6,000
Advertising Site as Swandon Way, London SW18 1SP	1 June 2019	£7,500	£12,000	£12,000
Advertising Site at 2 Holland Road, London W14 8LY	1 June 2019	£10,000	£18,000	£18,000
Daylite LED Media Ltd, Adj 469-475 The Highway, London E1W 3HN	1 October 2016	£12,000	£18,000	£18,000

* The subject property

24. These comparable properties were, in Mr Cates' opinion, good comparators as they were unchallenged or had been agreed. The site outside Sainsbury's was smaller than the subject property being only one six sheet site. The Daylite Site was in a poorer location but was larger than the subject property being a 32 sheet site. They both supported the RV of the subject property at £18,000.

25. The panel was aware that in the case of *Lotus v Delta* the basket of evidence used in the valuing of a property included that of comparable evidence of similar sites in the vicinity of the subject property. The panel put weight on the comparable properties provided by the VO which provided strong evidence to support the RV of £18,000 on the subject property.

26. Mr Cates drew the panel's attention to the information about the number of 'hits', the footfall and number of cars passing the sites. He submitted that these would be highly relevant to the likely rental value of an advertising site when the lease was agreed. He noted that the subject site had a 95% fall in the amount of passing traffic and footfall and this would have translated into a significantly lower rent. This was due to Coronavirus and was the rental period that Mr Wackett was relying on in this case. The rent paid therefore did not correspond with the value of the site at the AVD which was before Coronavirus. He commented that although the RV is not calculated based on the number of hits, footfall and traffic it did help to give a good indication of the quality of the site. In the case of the subject property there are two weekly impacts of 3,274,740 and 55,000 motor vehicles passing in 2015 and so he submitted the subject property was a good quality location .

27. The panel found that the level of hits and size of the footfall and passing traffic supported the subject property being a good quality location.

28. Mr Cates submitted that the location of the subject site on the entrance to Waitrose, one of the top ten supermarkets and on Cromwell Road, one of the main arterial roads in London, would be advantageous. He asked the panel to note that, in the photograph included in the evidence bundle, even from a moving vehicle, the subject property could easily be viewed.

29. Mr Cates explained that the idea of a site being considered to be part of a portfolio was not part of the rating hypothesis. The rent on the subject property was four years after the AVD and related to the period of time included the period of Coronavirus pandemic which affected the rent significantly. This meant that, in his opinion, it would have required too many adjustments to be reliable to form the basis of the RV. In the *Lotus v Delta* case it was found that the rent on the subject property was only the starting point when determining an RV, the whole basket of evidence of other rents in similar properties in the vicinity of the subject property needed to be taken into consideration.

30. The panel noted that the rent was set four years after the AVD, included a period when the pandemic reduced the number of passing people and vehicles by 95% and the panel therefore found it was unable to put much weight on it. The comparable properties submitted by Mr Wackett supported that there was a tone set and the subject property RV fitted in with that tone. The comparable properties produced by the VO also supported the RV.

31. In cases such as this, it is for the appellant to prove his case . The panel found, on the balance of probabilities, that the appellant had failed to prove his case. The panel was aware that the impact of Coronavirus on the rent for the subject property could not be taken into account as the subject property had to be valued as at the AVD which was prior to Coronavirus. In this case, therefore, the panel found that the basket of evidence provided by the respondent supported that the current assessment of the subject property at RV £18,000 was reasonable. The appeal was therefore dismissed.

Date: 24 January 2023

Appeal number: CHG100337935

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.