THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal (2017 list); Local Government Finance Act 1988; Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; Price p/m^2 in dispute; appeals dismissed.

RE: Two hereditaments on Tramway Road, Bristol BS4 3DS

APPEAL NUMBERS: CHG100339697 and CHG100297759

BETWEEN: GO Outdoors Limited, Dunelm (Soft Furnishings) Limited — Appellants

and

The Valuation Officer — Respondent

PANEL: Mr M Smith (Senior Member sitting alone)

CLERK: Mr A Johnson Tech IRRV

REMOTE HEARING: 11 January 2022

APPEARANCES: Mr B Batchelor-Wylam of Colliers LLP for Go Outdoors Ltd
Mr R Wiltshire of GL Hearn for Dunelm (Soft Furnishings) Ltd
Mr S Lewis (for the Valuation Officer)

DECISION AND STATEMENT OF REASONS

Summary of decision

1. The appeals were dismissed. I was satisfied that the rateable values of the appeal hereditaments were not unreasonable.

Introduction

2. This is not intended to be an exhaustive record of the proceedings. The absence of a reference to any statement or item of evidence placed before the Panel should not be construed as that statement or item of evidence being overlooked.

3. Prior to the hearing my fellow Panel member became unavailable and was unable to consider these appeals with me. In accordance with the tribunal's business arrangements I, as a Senior Member, was authorised to consider and determine this appeal alone.

   Hearings where a member is unable to sit

   Where a panel member is unable to sit for any reason or fails to attend, they will be replaced by another member wherever possible. However, a hearing will proceed with a Senior Member alone where necessary, to avoid postponing the hearing.

4. These appeals were brought pursuant to regulation 13A of the Non-Domestic (Alterations of Lists and Appeals) (England) Regulations 2009. The appellant's challenged the Valuation Officer's decision that the Rateable values of £292,500 for Go Outdoors Ltd and £405,000 for Dunelm (Soft Furnishings) Ltd, effective from 1 April 2017, were reasonable.

5. These two appeals concerned hereditaments which were retail warehouses. Constructed in 1986, they were in close proximity to one another near (but set back from) the A4 on Tramway Road in Bristol. As the appeal raised common arguments the parties representatives agreed in writing (prior to the hearing) to consolidate the appeals. Therefore, I consolidated the hearing of these two appeals in accordance with the general power under provided by regulation 6 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009. I was satisfied that all the evidence before me was admissible under Regulation 17A(1)(b) of these Regulations.

6. Mr Batchelor-Wylam appeared on behalf of Go Outdoors Limited and Mr Wiltshire appeared on behalf of Dunelm (Soft Furnishings) Limited as both advocates and expert witnesses. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Batchelor-Wylam stated that he was instructed under a fixed fee and contingency arrangement whilst Mr Wiltshire stated that he was instructed on a fixed fee only basis.

7. Mindful of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT (LC), I 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 Tribunals' 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).

8. It was therefore appropriate that I consider the 'expert' evidence and assess what weight, if any, to give it in the context of the issues before me.

Remote hearings

9. The President of the Valuation Tribunal for England (VTE) is required to make sure arrangements are in place and make such statements and Directions so as to ensure that business before the Tribunal is conducted in accordance with The Local Government Finance Act 1988, Schedule 11, Part 1, paragraph A17(1) and The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and by virtue of Part 2 regulation (5) (arrangement for appeals) and regulation (6)(3)(g) (appeal management powers) the VTE may determine the form of any hearing.

10. Therefore, in pursuance of Regulation (6)(3)(g) the VTE has incorporated ‘remote hearings’ as part of that definition and for the time being as the default option until it is safe to return to normal working. The Tribunal’s Consolidated Practice Statement has been amended to reflect this. The Panel were satisfied that the parties present at the remote hearing were able to fully participate in the proceedings and that it was just and equitable for a remote hearing to be held.

Issue

11. The issue in dispute was the rateable values ascribed to each of the appeal hereditaments with effect from 1 April 2017.

Decision and reasons

12. I considered a joint evidence bundle which included all of the documents exchanged between the parties as part of the challenge process.

13. On behalf of the appellants, Mr Batchelor-Wylam and Mr Wiltshire contended that the current rv’s were not reasonable and should be based upon a main space rate of £70 p/m^2 which resulted in revised rv’s of £240,000 (for Go Outdoors Limited) and £337,500 for Dunelm (Soft Furnishings) Limited.
However, it was Mr Lewis’ contention that £85.00 p/m^2 was reasonable and, therefore, the respective rv’s should remain unchanged at £292,500 and £405,000.

14. In support of their contentions, the parties referred me to rental evidence for the appeal hereditaments and other retail warehouses in the locality which had been analysed and adopted as follows:

Address	Total area ITMS m^2	RV	Adopted value £ p/m^2
Go Outdoors Ltd, Tramway Road, Bristol BS4 3DS	3,441.88	£292,500	£85.00
Dunelm (Soft Furnishings) Ltd, Tramway Road, Bristol BS4 3DS*	4,770.96	£427,500 (£405,000)	£90.00 (£85.00)
B & M, Unit 5 Brislington Retail Park, Bath Road, Bristol BS4 5NG	2,937.84	£277,500	£95.00
Do It All, Winterstoke Road, Bristol BS13 7TJ	3,141.20	£297,500	£95.00
B & M, Imperial Park, Wills Way, Bristol BS13 7TJ	3,661.90	£477,500	£110.00
Matalan, Unit 4C Brislington Retail Park, Bath Road Bristol BS4 5NG	2,657.60	£412,500	£130.00
Wickes Building Supplies Ltd, Aldermoor Way, Bristol BS30 7DA	2,664.10	£402,500	£150.00

* The rv and the adopted value per m^2 for the hereditament occupied by Dunelm (Soft Furnishings) Ltd had, at a later date, been reduced by the Valuation Officer to £405,000 and £85.00 per m^2.

15. 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.

16. The material day (the date by which physical factors must be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (as amended). The material day in respect of the appeal hereditaments is also 1 April 2017.

17. The dispute between the parties concerned the appropriate base rate to be applied to the subject hereditaments in the calculation of their rv's. In short, was £85.00 per m^2 reasonable or should it be reduced to £70.00 per m^2 (or thereabouts)?

18. In determining this dispute, I had regard to the passing rents for the appeal hereditaments as my starting point.

19. I was not convinced that an allowance for 'overage' in respect of the hereditament leased to Go Outdoors Limited was warranted. I acknowledged that the landlord benefited from the relative certainty of a long-term tenant. However, Go Outdoors Limited benefited from having an ability to forward plan. In summary, I found that both parties benefitted from the extended term of the lease. I also found that the landlords contribution of £3,175 Stamp Duty Lands Tax was of negligible value when compared to the annual rent. I therefore placed little weight upon this evidence.

20. I also considered it necessary to look at the rents of other retail hereditaments from the wider Bristol area (which had been put before me by the parties for comparison purposes) and the value that had been adopted, which ranged from £95.00 per m^2 to £150.00 per m^2.

21. After doing so, I was unable to reach a finding that the appeal hereditaments had been over-valued at £85.00 per m^2 which was beneath the range. In view of my findings, I was satisfied that the entries in the 2017 Rating List were reasonable, and I dismissed the appeals.

Date: 31 January 2022

Appeal Numbers: CHG100339697 and CHG100297759