VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; compiled list appeal; shop and premises; level of value; rental evidence; comparable properties; appeal allowed.

APPEAL NUMBER: CHG100353032

BETWEEN:	Lone Eagle Retail Ltd	Appellant
	and	
	Ms A Morley (Valuation Officer)	Respondent

RE: 11 Emery Gate, Chippenham, Wiltshire SN15 3JP

PANEL: Mr M Smith (Chairman)
Mrs F Cortese

CLERK: Mrs S Morgan

SITTING ON: Tuesday 9 April 2023 (Remote hearing number 2)

APPEARANCES: Mr A Morrish – Appellant's representative (Alder King)
Mr M Pearson for the respondent Valuation Officer

Summary of decision

1. The appeal was allowed. The appeal property's current assessment was reduced from £28,000 Rateable Value (RV) to £22,600 RV with effect from 1 April 2017.

Introduction

2. This appeal was brought in respect of 11 Emery Gate, Chippenham, Wiltshire SN15 3JP (the appeal property). The appeal property is a shop and premises which consists of 83.93m^2 of retail space. It is a ground floor retail unit situated within Emery Gate Shopping Centre. Emery Gate is an indoor single level shopping centre consisting of 29 retail units. There is car parking for 304 spaces on ground and basement levels at the rear of the centre.

3. The challenge submission was received on 31 July 2020. The grounds for the challenge disputed the accuracy of the RV in the Rating List on 1 April 2017. At this stage the original RV of £30,750, based on a zone A rate of £550/m^2, was reduced to £500/m^2 giving a revised RV of £28,000 with effect from 1 April 2017. The appellant's representative sought an initial reduction to £15,000 RV based on £330/m^2. This was amended to £22,600 RV based on £400/m^2 in later evidence.

4. Mr Morrish appeared on behalf of the appellant as an expert witness. In view of the Upper Tribunal's judgment in Gardiner & Theobald LLP v David Jackson (VO) [2018] UKUT 0253 (LC), Mr Morrish's declaration of truth included a statement that he was instructed under a fixed fee rather than a success related fee. Mr Morrish also 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. The panel accepted this expert witness evidence on the above basis as the parties agreed the appeal was not complex and to do otherwise would be contrary to regulation 3 (Discharge of Valuation Tribunal for England (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. Mr Pearson also appeared as advocate and expert witness on behalf of the Valuation Officer.

7. This tribunal decision document is not and does not purport to be a verbatim record of proceedings.

Issue

8. The appellant's representative contended that the zone A rate adopted in the assessment was excessive. He sought a reduction to £400.00/m² whilst the Valuation Officer's representative contended that £500.00/m² was reasonable.

9. The floor areas were not in dispute.

Evidence and submissions

10. The evidence bundle before the panel comprised all of the evidence disclosed and exchanged during the challenge process which included a schedule of comparable rental evidence, the parties' comparable properties, an evidence summary, location plans, photographs of the appeal property and comparable properties, their skeleton arguments, non-domestic regulations and case law.

11. Reference was made to the following judgments during the hearing.

    Arma Hotels Ltd v Dawn Bunyan (VO) [2023] UKUT 00003(LC)
    Dawn Bunyan (VO) v Acenden Ltd [2023] UKUT 17(LC)
    Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141.

Decision and reasons

12. The main issue in dispute concerned the zone A rate to be adopted for the appeal property.

13. The term 'rateable value' is defined in paragraph 2(1), 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;
> >
> > 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;
> >
> > 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".

14. 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 (SI 2014 No. 2841).

15. The material day (the date by which physical factors have to be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject appeal, the material day is 1 April 2017.

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

17. The panel noted that there was no rent available on the subject property around the AVD, although the respondent had provided details of the asking rent of £35,000 pa in 2021. Additionally, there was no evidence to suggest that the market rent would support £15,000 at 1 April 2015 having regard to the asking rent of £35,000. As the asking rent was 6 years after AVD, the panel attached no weight to this evidence.

18. The panel went on to consider the other rents for the comparable properties provided by the parties. It found that the new lettings for Units 14, 8 and 9 Emery Gate referred to by the appellant's representative carried the most weight. The 2014 lettings on Units 8 and 14 Emery Gate analysed to £395/m^2 and £364/m^2 respectively, with the 2016 rent on Unit 9 analysing to £375/m^2. The panel noted that both parties agreed with the analysis on Units 14 and 9. Although the respondent's representative had not provided his analysis for Unit 8, he was happy to accept £395/m^2.

19. The panel also noted that the respondent accepted that the new lettings referred to by the appellant's representative would support a reduction in the zone A price but not as much as that being sought by him.

20. The respondent had relied on a renewal lease from February 2012 on Store 4 Emery Gate (Peacocks) and Kiosk 4 in support of his case for £500/m^2. However, it was established that details in the analysis for Store 4 were incorrect and therefore little weight was attached to that assessment. Kiosk 4 was a shell unit; however, this was much smaller than the subject property at 22.09m^2. The 2014 lease on this property analysed to £505/m^2. The panel considered that this was not a standard retail unit and did not find it as persuasive as the other new lettings around the AVD. For similar reasons, the panel also placed less reliance on Unit 5A. The June 2012 lease renewal on 6 Emery Gate analysed to 539/m^2. As the rent had not been adjusted to reflect it being fully fitted out, this property still supported the revised £500/m^2.

21. In relation to the tone of the list, the respondent argued that this had been established. He had referred to two settlements at £500/m^2 and renewal leases to support his contention that £500/m^2 appeared reasonable. The appellant's representative, on the other hand, provided a schedule which showed challenges on almost every unit in Emery Gate and therefore he argued that the tone was not established. The list of outstanding challenges was submitted in February 2024, one year after the list had ended. The panel had noted that one of the agreements was in respect of Peacocks (Store 4), which had the wrong analyse. Little regard was given to this as mentioned under the rental discussion above. Having some regard to the lease renewals and the two questionable settlements provided by the respondent's representative, the panel found that the tone was not established as there was no compelling evidence to suggest that it had. It therefore attached little weight to the argument that there was an established tone.

22. Having examined the evidence presented, the panel was satisfied that the new lettings close to AVD which analysed to figures ranging from £364/m^2 and £395/m^2 carried the most weight and supported a figure of £400/m^2 as contended for by the appellant's representative.

The panel was not satisfied that a tone at £500/m^2 was established. The appeal was therefore allowed as follows.

Description	**Area m/^{2}**	**£/m^2**	**Value £**
Zone A	34.83	400.00	13,932
Zone B	32.10	200.00	6,420
Zone C	17.00	100.00	1,700
	83.93	**Subtotal**	22,052
Additional Items			
Air conditioning system	83.93	7.00	588
		Total	22,640

Say £22,600 RV with effect from 1 April 2017.

Order

23. 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 amend the entry in the rating list to show a revised assessment of £22,600 RV for the appeal property, with effect from 1 April 2017.

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

25. The appellant is also entitled to a full refund of the fee paid in accordance with regulation 13E(1)(a) of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 (as amended)) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

Date: Tuesday 30 April 2024

Appeal number: CHG100353032

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.