THE VALUATION TRIBUNAL FOR ENGLAND

2017 rating list appeal; comparable properties; valuation schemes; rent passing on subject property; tone of the rating list for similar properties; appeal dismissed.

RE: Budgens, 1 Fortescue Street, Norton St Philip, Bath BA2 7PE
("the subject property")

APPEAL NUMBER: CHG100382159

BETWEEN:	Co-Operative Group	Appellant
	and	
	Dal S Virk (Valuation Officer)	Respondent

PANEL:	Mr S Kandola (Senior Member) Mr A Asante
CLERK:	Mrs A Sloan
HEARING:	Remote hearing No.2 on 2 February 2023
APPEARANCES:	Mr D Johnstone of Colliers International (for the Appellant) Mr P Kalwik (for the Respondent)

Summary of decision

1. Appeal dismissed. The panel ordered the rateable value (RV) of £14,250 from 1 April 2017.

Introduction

2. This appeal was lodged on 11 May 2022 to appeal the Valuation Officer's (VO) decision notice of 12 January 2022, which reduced the RV from £24,500 to £13,750 from 1 April 2017. The appellant's representative considered this valuation to be excessive and sought a reduction to £4,900 from 1 April 2017.

3. The subject property is a purpose-built shop, operated as a convenience store, constructed in 2013 as part of a new village housing development in Norton St Phillip.

4. The appeal was originally listed to a hearing on 10 November 2022 but was adjourned following consideration of a number of preliminary issues. One of those issues was that the VO had inspected the subject property shortly before the hearing and discovered some details that were not included in the survey data previously or identified at Check stage. As a result, Mr Kalwik wished to submit a revised valuation. The panel decided that the appeal should be adjourned to allow the parties time to discuss this development, and both provide revised valuations.

5. Prior to the subsequent hearing of the appeal on 2 February 2023, both parties provided the Tribunal with their updated valuations to reflect the revised survey data. Both confirmed that all evidence placed before the panel at the previous hearing was accepted as admissible, following the preliminary matters decided by the earlier panel.

6. Mr Johnstone was acting in a dual role as both advocate and expert witness for the appellant. In light of *Gardiner & Theobold LLP v Jackson* (VO) [2018] UKUT 0253 (LC), he declared that he was not retained on the basis of a conditional fee in this matter and understood and accepted that his duty was to the Tribunal in giving evidence. Mr Kalwik was also acting as both advocate and expert witness for this appeal.

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

Issue

8. The issue before the panel was the accuracy of the entry shown in the 2017 rating list for the subject property.

Evidence and submissions

9. Mr Johnstone explained that the subject property was originally occupied by Budgens, but they were unable to make a success of the business and it failed in early 2015. The property was then empty for around a year, until the Co-Operative Group took the lease in June 2016, and they remain in occupation. He considered that the best evidence in this case was the rent agreed on the subject property. He confirmed that the lease was for 12 years from 24 June 2016, although negotiations would have begun some months earlier and closer to the Antecedent Valuation Date (AVD). The lease provided for a three-year rent-free period, then from 24 June 2019 the rent was £10,000 per annum until 24 June 2021, when the rent increased to £20,000 per annum. There were tenant break options in 2021 and 2026 with a rent review in 2026. Mr Johnstone stated that the rent, analysed across the first five years of the lease (the term certain) totals £20,000 and this equated to £4,000 per annum. Reflecting the updated survey data, he proposed an RV of £5,400. This figure was arrived at with a base rate of £40/m^2 and a 50% pioneering end allowance.

10. Under questioning from the panel, Mr Johnstone accepted that 50% was high for a pioneering allowance but explained that he was trying to fit the valuation to the rent in this case. He maintained that the rent agreed on the subject property was the best evidence in this case and, if the panel did not accept the 50% pioneering allowance, he proposed lowering the base rate to £20/m^2 as an alternative valuation. Mr Johnstone acknowledged that the rent was low but confirmed that it was an open market rent, negotiated between tenant and landlord. He felt the proposed RV at £5,400 was fair as it was higher than the actual analysed rent on the subject property.

11. Mr Kalwik considered the subject property's rent carried little weight as it was agreed over a year after the AVD and was highly incentivised, with an unusually long rent-free period. He confirmed that the property was valued on a scheme for convenience stores in Somerset, which provided a range of values from £55/m^2 to £250/m^2. The original valuation had already been reduced from £100/m^2 to £55/m^2, so it was now at the bottom of the range of values for this type of property in the area. Mr Kalwik explained that the VO had analysed the rent over the full term, which produced an adjusted figure of £11,859 and analysed to £50.18/m^2. Overall, he considered this rent to be too far from the statutory definition to be of use.

12. Both parties had supplied comparable properties to illustrate the range of values for convenience stores. Mr Johnson had referred to 223 Winsley Road, Bradford-on-Avon, BA15 1QT, which had been valued at £47/m^2. This store is also occupied by the Co-Operative Group. He also referenced the Sainsburys supermarket in Frome Road, Bath, which measured around 4,000m^2 and was just a 13-minute drive from the subject property. He considered this meant there was little demand for a convenience store in Norton St Phillip, which would be reflected in the rent.

13. Mr Kalwik confirmed that the Winsley Road shop is around 8 miles from the subject property and in a better location for trade but also that this property is in Wiltshire and therefore valued under a different scheme. There was no rent available on that assessment. He also highlighted that there are other convenience stores in Bradford-on-Avon providing competition, whereas the subject property is the only convenience store in Norton St Philip. Mr Kalwik stated that the Sainsbury's in Frome Road is around 8 miles away and it opened in 2011, before the subject property was built. He questioned why the subject property was constructed if there was no demand and confirmed that, when he inspected the subject property, he found it was used by local people and located on a busy through road which provided passing trade.

14. Four examples were presented by Mr Kalwik for comparison with the subject property. Occupied by Spar, 19-21 Tucker Street, Wells is valued as a convenience store at £100/m^2. This was an older property, constructed between 1955 and 1964, and was located around 18 miles from the subject property. The subject property was originally valued on the same tone but had since been reduced to £55/m^2.

15. 34 Rodden Road, Frome is a convenience store valued at £130/$m^{2,}$ occupied by McColls. Another older property, constructed around 1900, it was located around 6 miles from the subject property. It is situated in a more densely populated area, and this is reflected in the higher rate.

16. By way of rental evidence, Mr Kalwik referred to 13-15 West End Street. The lease on this property was agreed in January 2015 at £20,000 before the AVD on full repair and insurance (FRI) terms, requiring no adjustment. The property was built between 1955 and 1964 and was located in a denser locality than the subject property, around 26 miles away. This property was valued at £75/m^2.

17. The final example was Spar, Culverhill in Frome. The rent was also agreed before the AVD in April 2012, at £35,000, on an FRI basis with no adjustments required. This property was more modern, being constructed in 1992, and was located 7.6 miles from the subject property. Mr Kalwik stated this is also a more densely populated area than Norton St Philip. This property was valued at £85/m^2.

18. After considering the evidence, Mr Kalwik felt that the existing rate of £55/m^2 was fair, and the appeal should be dismissed. However, following his recent inspection and factoring in the missing elements from the valuation at challenge stage, he sought an increased RV of £14,250. Mr Johnstone maintained the rent agreed on the subject property from June 2016 provided the best evidence.

Decision and reasons

19. 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."

20. 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 AVD of 1 April 2015. The material day (the date by which physical factors have to be taken into account) was 1 April 2017.

21. The panel was aware of the judgment in *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141, referred to by the parties. 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.

22. It was accepted by the panel that, as there was rental evidence available for the subject property, this must be the first consideration. The property was let to Budgens from January 2013 on a new 15-year lease at £28,000 per annum. The VO's records showed that this rent included parts of the property used as living accommodation and also payments for water and service charges. The panel concluded that this rent was agreed too far before the AVD of 1 April 2015 and was not helpful as it included domestic parts of the property.

23. The rent agreed with the landlord by the appellant in June 2016 was closer to the AVD, but the lease still began over a year later. Due to the extended rent-free period, the rent did not commence until June 2019. The panel understood from the parties that the property had remained vacant for around a year after Budgens ceased trading there and concluded that the landlord would have been keen to re-let the property. The panel found that the rent

passing on the subject property was not particularly close to the AVD, highly incentivised, and required significant adjustment to reflect the statutory definition of rateable value. It therefore did not find the rent to be conclusive in this case.

24. The panel noted that the comparable properties presented by the parties were all some distance from the subject property. However, it appreciated that there were limited examples of convenience stores in the locality, so the parties had looked further afield for comparable examples. The closest, geographically, was 34 Rodden Road in Frome, which was 6 miles from the subject property. This property was significantly older than the subject property and in a more populated area. Its valuation based on £130/m^2 did not suggest the subject property's valuation at £55/m^2 was excessive.

25. Spar, Culverhill in Frome was 7.6 miles from the subject property and much closer in age, built in 1992. This property was valued at £85/m^2, based on the rent from 2012. Whilst the rent was agreed some years before the AVD, the panel found this assessment was within the range of values for convenience stores in Somerset and did not support a reduction for the subject property.

26. 19-21 Tucker Street in Wells and 13-15 West End Street were further away, 18 and 26 miles respectively. The panel noted that the assessments on these properties were also within the range of values for the convenience store scheme in Somerset. The only comparable property valued below £55/m^2 was 223 Winsley Road, Bradford-On -Avon, presented by the appellant's representative. The panel found that this property, although geographically close (being 8 miles or a 13-minute drive from the subject property), was in a different locality in Wiltshire and therefore subject to a different market and valuation scheme.

27. After considering all the evidence presented, the panel was not persuaded that the current valuation was excessive. The burden of proof in this case rested with the appellant's representative to show that the RV was unreasonable, and the panel did not find that he had been successful. It held that the assessment based on a base rate of £55/m^2 was reasonable, but the current valuation should be altered to £14,250, reflecting the revised survey data as requested by Mr Kalwik.

28. The clerk advised at the hearing that any increase would usually be effective from the date of the panel's decision. However, on further consideration of the Regulations, the panel found that Regulation 38(5) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 (SI 2009/2269) states –

5) Subject to paragraph (7), where it is decided that a disputed rateable value should be an amount greater than—

(a) the amount shown in the list at the date of the proposal; and

(b) the amount proposed by the appellant,

the VTE must order the VO to alter the list with effect from the day on which the VTE made the decision.

29. The panel noted that the RV when the Challenge proposal was made was £24,500, reduced to £13,750 in the Challenge decision. Therefore, the increase to £14,250 was not greater

than the amount shown in the list at the date of proposal and the increase was not date restricted.

Order

30. In accordance with Regulation 38 (4) and (9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Officer is ordered to amend the entry for Budgens, 1 Fortescue Street, Norton St Philip, Bath, BA2 7PE in the 2017 Rating List to £14,250 effective from 1 April 2017.

31. The Valuation Officer must comply with this Order within two weeks of its making.

Date: 17 February 2023

Appeal number: CHG100382159

Appeal Rights

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.