THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; accuracy of the rateable value in the list on 1 April 2017; shop and premises; rental evidence; comparable assessments; appeal dismissed.

RE: 338-339 Shopping Centre, Elephant and Castle, London SE1 6TB

APPEAL NUMBER: CHG100392690

BETWEEN:	C & J Clark Properties Limited	Appellant
	and	
	Ms D Bunyan (Valuation Officer)	Respondent

PANEL: Mr K Everett (Presiding Senior Member)
Miss S Ballentine (Senior Member)

CLERK: Mrs H Beresford

REMOTE HEARING ON: 20 September 2022

APPEARANCES: Mr J Taylor of GL Hearn (Appellant's representative)
Mr B Jones (for the Valuation Officer)

Summary of decision

1. The appeal was dismissed, the assessment was confirmed at rateable value (RV) £87,000 with effect from 1 April 2017.

Introduction

2. This appeal had been brought in respect of the following: 338-339 Shopping Centre, Elephant and Castle, London SE1 6TB, (the 'appeal property'), which was entered in the 2017 rating list as 'shop and premises' with an RV of £104,000 effective from 1 April 2017. It had since been reduced at the check stage to £94,000 and at the challenge stage to £87,000 with effect from 1 April 2017. This was by virtue of a 'Size or Quantity Allowance' of -7.5%. The zone A rate of £500/m^2 was maintained.

3. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, GL Hearn Limited made an appeal to the Valuation Tribunal for England (VTE) on behalf of the appellant. The appeal to the VTE was made on 8 March 2022 on the grounds that the valuation for the appeal property was not reasonable, as the assessment had not been altered in the manner sought in the proposal. The appellant had sought a reduction to RV £74,500 with effect from 1 April 2017.

4. The appeal property had been located in the Elephant and Castle shopping centre in London which had recently been demolished. The appeal property was constructed circa 1965-1970 and was of traditional construction with the benefit of full central heating and partial air conditioning throughout. It comprised a retail shop double unit and frontage on the ground floor level of the shopping centre. The ancillary accommodation was situated in the basement. The appeal property was a Clarks factory outlet shoe shop with an area of 723.19m^2 and there were various national retail occupiers including Boots, Shoe Zone, Superdrug and Iceland in the immediate locality.

5. Both parties stated that they were appearing as advocate only.

6. 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 when 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

7. The base level of value adopted for the appeal property was not agreed. The Valuation Officer had adopted £500/m^2 in respect of the appeal property but the appellant sought a reduction to £425/m^2. The parties had agreed that the property measured 723.19m^2.

Evidence and submissions

8. The bundle comprised all of the documents exchanged between the parties as part of the challenge process. This included: the challenge document and supporting evidence; the Valuation Officer's initial response; comparable properties; rental evidence; location plans; photographs of the appeal property and the comparable properties; assessment and rental evidence; tenure information; the definition of rateable value and case law.

9. In the challenge it was contended that the rating assessment of £500/m^2 on the subject property was not in line with the passing rent of £75,000 per annum which was agreed in November 2009 and reviewed in 2014 when there was a nil increase. It was argued that, taking into account all the facts and rental evidence and given the nil increase in 2014 which suggested that £75,000 was the best rent achievable at that time, an RV of £74,500 should be adopted based on a revised unadjusted rate of £425/m^2 which was more appropriate. Mr Taylor went on to refer to various comparable properties which he submitted supported his case.

10. Mr Jones argued that the rent on the subject property was a rent review which resulted in a nil increase on a 2009 rent and, as such, would carry less weight than a new open market letting as the market had not been tested. He also stated that at the challenge stage, a 7.5% allowance for size had been adopted and therefore the analysed rent of £408/m^2 was now £439/m^2. He contended that, based on the evidence available, £500/m^2 was not

unreasonable. Mr Jones asked the panel to confirm an RV for the appeal property of £87,000.

Decision and reasons

11. The panel had to determine the rateable value for the appeal property which represented a rent that a hypothetical landlord and tenant would agree at the antecedent valuation date (AVD) of 1 April 2015. The common date was used to ensure that every property was treated in a consistent way.

12. The term 'rateable value' is defined in 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"

13. The Lands Tribunal judgment in *Lotus and Delta* v *Culverwell (VO) and Leicester City Council* [1976] RA 141, which had been referred to by both parties, 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.

14. The panel noted that there was rental evidence for the subject property of £75,000 per annum agreed in November 2009 which was reviewed in 2014 but with a nil increase. The panel found that whilst the passing rent formed a good starting point for determining the RV of a property this was a rent review which was agreed five months prior to the AVD and therefore other evidence should also be taken into consideration.

15. Mr Taylor had referred to rental evidence for properties in the Elephant and Castle shopping centre and this included: Unit 338-339, Clarks, which had a rent of £75,000, this was a rent review effective 18 November 2014, this rent analysed to £407/m^2 In terms of zone A (ITZA); Unit 333-335, Boots, which had a rent of £41,200 and was a new lease effective 17 March 2017, this rent analysed to £368/m^2 ITZA; Unit 327, Shoe Zone, had a rent of £38,000, this was a new lease effective 6 June 2014 which analysed to £490/m^2 ITZA; Unit 300-304 Iceland, a rent review of £108,850 from 1 December 2014 and analysed to £388/m^2 ITZA;

and Unit 339 Superdrug, had a rent of £50,924, effective from 24 March 2016, a lease renewal which analysed to £464/m^2 ITZA. This evidence included mainly reviews which suggested to the panel that the open market had not been properly tested, it also noted that that the two new leases were agreed in 2014 and 2017. The panel attached moderate weight to this evidence.

16. The panel noted that Mr Taylor had taken an average of the price/m^2 for these units to obtain a value of £425/m^2 but the panel found that this did not follow the rating hypothesis of open market value. It also noted that Mr Jones had contended that, since the adoption of a 7.5% end allowance for size, the rent on the subject property now analysed to £439/m^2.

17. The panel found the rental evidence cited by the Valuation Officer to be the more persuasive. It found the most useful comparators to be Unit 311, Price Buster, which had an unadjusted rent of £61,100, effective 1 October 2015, which analysed to £605/m^2 ITZA and Unit 305 Price Buster, which had an unadjusted rent of £27,000, effective 24 January 2014, which analysed to £532/m^2 ITZA. The panel noted that these properties were smaller than the appeal property, however it was aware that this had been compensated for with a 7.5% end allowance for size for the appeal property. These were new lettings which fitted the rating hypothesis as a new tenant coming fresh to the market and, in particular, the rent on Unit 311 was agreed close to the AVD. Along with the basket of evidence, the panel found this evidence supported a base rate of £500/m^2 for the subject property.

18. The panel found that in cases of this nature the burden of proof is on the appellant to satisfy the Tribunal that the appeal should be allowed. In this case the panel was not persuaded by the evidence and arguments put forward by the appellant's representative that a reduction in the assessment to £425/m^2 was warranted. Therefore, the appeal was dismissed.

Date: 17 October 2022

Appeal number: CHG100392690

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.