THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 list appeal; shop and premises; comparable properties; subject rent; appeal allowed in part.

Re: The Works Stores Ltd,7 Royal Priors Lower Mall, Leamington Spa,CV32 4XU

APPEAL NUMBER: CHG100394050

BETWEEN:	The Works Stores Ltd	Appellant
	and	
	Mr D Virk (Valuation Officer)	Respondent

PANEL: Mr S Wood (Chairman)

Ms S Yousef

CLERK: Mrs K Clewer

REMOTE HEARING No. 3 on 16 August 2021

APPEARANCES:

Mr D Bullimore of Lambert Smith Hampton on behalf of the appellant as both advocate and expert witness
Ms H Finn on behalf of the respondent Valuation Officer as both advocate and expert witness

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Summary of decision

1. Appeal Allowed in Part; The appeal property's assessment was reduced to £37,250 Rateable Value (RV) with effect from 30 June 2017.

Introduction

2. This appeal has been brought in respect of the following: The Works Stores Ltd,7 Royal Priors Lower Mall, Leamington Spa,CV32 4XU, which had been entered in the 2017 Rating List as shop and premises at £41,000 RV, effective from 1 April 2017.

3. During the check stage of the appeal process, the Valuation Officer (VO) amended the rating list to show the RV of the appeal property as £39,500 with effect from 30 June 2017. This was due to the removal of the plant and machinery previously valued within the assessment.

4. The appellant's Challenge to the Valuation Officer (VO) was made on 9 September 2020. An appeal to this Tribunal was made following the VO's Decision Notice of 22 December 2020.

5. Shortly prior to the hearing the VO made an inspection of the appeal property and submitted revised floor areas. Mr Bullimore stated he had not been provided with sufficient time to check these areas, but accepted those proposed by the VO in order to proceed with the hearing. Following the amendment to the areas, the VO sought a RV of £37,750. Mr Bullimore sought a RV of £16,750.

6. Parties are reminded that all factual matters should have been agreed under regulations 4A to 4F of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (SI 2009/2268). If the VO was in doubt about the factual information held on its records, then an inspection should have been made at the time of the check, and the check completed once the parties had confirmed the factual information.

7. The appeal property was a retail unit located on the lower ground floor within the Royal Priors Shopping Centre in Leamington Spa. It measured 117.78m^2 . The valuation of £39,500 RV was based on an unadjusted zone A price of £560 per m^2.

8. 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.

9. 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.

10. Mr Bullimore 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 Bullimore's declaration of truth included a statement that he was instructed under any conditional fee arrangement.

11. Mr Bullimore 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 the client's case.

12. The panel 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 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).

13. The panel therefore considered the "expert" evidence and attached such weight to it as it saw fit.

14. 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 evidence, should not be construed as it having been overlooked.

Issue

15. The issue in dispute was whether the zone a price of £560 per m^2 and the proposed RV of £37,750 was correct.

Evidence and submissions

16. The evidence bundle provided to the panel comprised all the submissions exchanged between the parties as part of the challenge process.

17. Mr Bullimore gave an overview of the reasons for the appeal. He submitted that the rent of the subject property with effect from June 2017 for £37,346 was inclusive of service charge and insurance which supported a revised zone A rate of £250 per m^2. This was also supported by the rents of other units on the lower ground floor.

18. Having regard to his evidence, Mr Bullimore sought a revised assessment of £16,750 RV for the appeal property, based on a zone A value of £250 per m^2.

19. Ms Finn argued that the appeal property's assessment was fair and reasonable. She referred to the service charge being unknown for the appeal property and the fact that insurance was also included. Within her rental schedule Ms Finn had analysed the appeal property's rent at £494.27 per m^2 which she contended supported the current zone A price of £560 per m2. This was also supported by rents of comparable properties located on the lower ground floor of the centre. Given the amendment to the floor areas she sought a revised RV of £37,750.

Decision and reasons

20. The issue in dispute concerned the level of value to be adopted for the subject property. 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 –
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> a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;
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> 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;
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> 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".

21. The antecedent valuation date (AVD) for 2017 list rating appeals is 1 April 2015. As this appeal concerned a challenge to the amended entry, in accordance with Non-Domestic Rating (Material Day for List Alterations) Regulations 1992, the material day is 30 June 2017, thus meaning this is the date the panel had regard to physical facts relating to the appeal property and its locality.

22. The panel had regard to the Lands Tribunal judgment of *Lotus & Delta v Culverwell and Leicester City Council (*LVC/376/1975). 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 is 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.'

23. Bearing these six propositions in mind, the panel acknowledged that the correct starting point in this appeal was the actual rent passing on the appeal property. The rent of £37,346 per annum was an open market letting effective 30 June 2017. However, it included a service charge and insurance and therefore did not meet the definition of the rating hypothesis. Mr Bullimore stated that the service charge paid in 2015 had been £13,000 but provided no information as to the current level of charge. Mr Bullimore did not provide an analysis of the subject rents. The VO had analysed the 2017 rent to £494.27 and the rent in 2013 to £604.60 per m^2. No information had been provided as to how these figures had been achieved but the panel considered that the analysis of the VO appeared to support the current level of value adopted. The panel did not find these rents to be conclusive given the adjustments required to meet the rating hypothesis and turned to the comparable rents for assistance.

24. Unit 9 Lower Mall was a smaller property measuring 75 m^2. The rent set at 8 February 2016 of £10,000 analysed £214 and appeared to support a lower value for the subject property. However, the panel noted that the unit had been let to a start-up business which indicated that a lower rent was accepted in order to secure a tenancy. The panel therefore attached little weight to this rental evidence.

25. Unit 4 Lower Ground Floor had a rent of £60,000 per annum set on 12 August 2013. The VO had conducted three different analyses of this rent due to conflicting information provided on the Forms of Return. These were £740.19 per m2, £697.21 per m^2 and £639.43 per m^2. Whilst it would have been helpful for the panel to have been provided with the correct details of the terms of the lease for this property, the rent did in its opinion support a value of £560 per m^2 for the appeal property.

26. Unit 1 Lower Ground Floor was the closest rent to the AVD commencing on 1 June 2015. The panel attached some weight to this rent which devalued to £524.70. It was located some distance from the stairs and lifts but from the more popular upper floors than the appeal property which the panel considered may lead a hypothetical tenant to make a lower bid than for the subject property. It was also much smaller than the appeal property and therefore the panel considered it would attract a different type of tenant. It was therefore of some assistance but could not provide the concrete evidence the panel was looking for.

27. Unit 3 Lower Ground Floor was located next to Unit 1 and the rent set at 1 April 2016 devalued to £291.05 as per the VO and £283 as per Mr Bullimore. This property measured 79.99m^2. However, the panel noted that the rent was inclusive of business rates, service charge and insurance. Neither party had provided a breakdown of their analysis to account for the inclusion of business rates and service charge and therefore the panel could attach little weight to the analysed rents for this property.

28. Unit 10 had a rent set in July 2013 for £50,000. This was for a 10 year and 6-month term with 5 yearly rent reviews. A £180,000 capital contribution had been made with a three-month rent-free period. Mr Bullimore had analysed this rent to £154 per m^2. The panel attached very little weight to this rent given the amount of adjustment required to meet the rating hypothesis.

29. The panel disregarded the rent of Units L11 and U4 as this property extended to the Upper Ground Floor and therefore the rent would be higher to accommodate this.

30. Units 13-16 measured 791.66m2 and had been let at a rent of £220,000 on 7 June 2016. The VO analysed this rent to £611.25 per m^2. Mr Bullimore had analysed this to £700 per m^2. The panel noted that this was a much larger property but the rent did not appear to show that it had any reduction applied for quantum. The panel considered that this rent supported £560 per m^2 for the appeal property.

31. Unit 6 Lower Ground Floor had been let at a rent of £63,500 on 5 January 2012. Ms Finn explained that two analyses had been conducted as according to the Forms of Return, whilst both stated a 1 year 3 month rent free period one had stated the tenant was responsible for internal repairs and insurance and the other that the landlord was. Ms Finn had analysed the rent to £639.13 with the landlord responsible for internal repairs and insurance and to £602.83 with the tenant responsible. This appeared to support the £560 per m^2 adopted for the appeal property but the panel was aware that this rent had been agreed some three years prior to the AVD.

32. This was an extremely difficult case given the lack of rents in 2015 and those pre and post the AVD all requiring some adjustment. The panel was not helped by the parties as they had failed to state the adjustments required in the bundle or any calculations to show how the rents had been analysed. However, given the general tone of rents on the lower ground floor, with the exception of Units 9 and 10, and the rent on the appeal property, the panel considered that the zone A price adopted for the appeal property was correct.

33. The panel acknowledged Mr Bullimore's argument that a 2.5% uplift had been applied to the zone A price for the appeal property to account for the sprinklers. However, there was no uplift applied to any other property within the shopping centre. The panel heard no argument from Ms Finn as to why this was this case and therefore concluded that no uplift should be applied.

34. In view of the foregoing, having consideration of the evidence presented, the panel found the zone A price of £560 per m^2 to be the correct level of value for the appeal property but that no uplift should be applied. The appeal was therefore allowed in part.

Order

35. Under the provisions of regulations 38(4) and 38(7) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to reduce the entry in the rating list to show the following:
The Works Stores Ltd,7 Royal Priors Lower Mall, Leamington Spa,CV32 4XU

Rateable Value £37,250 effective from 30 June 2017.

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

37. A refund of the paid fee will now be arranged (Regulation 13E of the NDR Alteration of Lists & Appeals Regs) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

Date: 10 September 2021

Appeal number: CHG100122979