THE VALUATION TRIBUNAL FOR ENGLAND

*Non-domestic rating; 2017 Rating List appeal; shop and premises; price per m$^2$ to be adopted in the assessment; rental and comparable evidence; allowance for hard frontage; relativity to be applied to masked retail area; appeal allowed in part.*

RE: The Boston Tea Party, 293 Gloucester Road, Bristol BS7 8PE

APPEAL NUMBER: CHG100407898

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| BETWEEN | The Boston Tea Party | Appellant |
| | and | |
| | Mr D Virk (Valuation Officer) | Respondent |

BEFORE: Mrs N Yang (Senior Member sitting alone)

CLERK: Mrs A Keohane

REMOTE HEARING 2: Friday 11 February 2022

APPEARANCES: Mr M Hampton-Riddington of Cluttons on behalf of the appellant, as advocate and expert witness
Mr F Eyston on behalf of the Valuation Officer as advocate and expert witness

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**Summary of decision**

1 Appeal allowed in part. The appeal property's assessment was correctly based on £340/m$^2$ and the allowance incorporated by the Valuation Officer to reflect its hard frontage was reasonable. However, the price/m$^2$ adopted for the masked retail area situated behind a solid wall was reduced in line with the representative's proposed relativity. A revised assessment of £41,500 rateable value (RV) with effect from 1 April 2017, was therefore determined.

**Introduction**

2 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.

3 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. In accordance with that Practice Statement, the hearing was conducted remotely via a Microsoft Teams conference call using an audio/video-link.

4 Due to the unavailability of a member, I determined this appeal alone, as provided for under paragraph 11 of the Valuation Tribunal for England's Tribunal Business Arrangements.

5 This is a 2017 rating list appeal in respect of 293 Gloucester Road, Bristol BS7 8PE (the 'appeal property'), entered in the 2017 rating list as 'Shop and Premises' at £53,500 RV with effect from 1 April 2017, based on a zone A rate of £350/m$^2$.

6 The challenge proposal, submitted by Cluttons on behalf of The Boston Tea Party, was received by the Valuation Officer on 28 September 2020. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was wrong. A revised assessment of £33,000 RV was proposed with effect from 1 April 2017, based on a zone A rate of £250/m$^2$.

7 The Valuation Officer issued a challenge case decision notice on 28 September 2021, which stated that based upon the evidence and information available, the existing rating list entry was considered to be unreasonable. The rating list was amended to £43,000 RV based upon a revised zone A rate of £340/m$^2$.

8 In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, an appeal was received by this Tribunal against the Valuation Officer's decision on 11 October 2021.

9 As Mr Hampton-Riddington appeared on behalf of the appellant as both advocate and expert witness, he was asked if there was a success related fee involved and, if so, whether its existence was compatible with his obligations to the Tribunal as an expert. This question was raised in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC).

10 Mr Hampton-Riddington declared that he was not instructed under any conditional or success related fee but on a fixed fee basis. However, he confirmed 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. The expert evidence was considered, and I attached appropriate weight to it.

11 The appeal property is a café located on the intersection of Gloucester Road and Neville Road. The property is valued on a retail basis to reflect its location within other retail units on Gloucester Road. It comprises a kitchen and seating area, with the zoned and three outdoor seating areas situated along Neville Road. The property is of a traditional brick construction and has a bank style frontage.

12 Mr Hampton-Riddington had provided further information for this appeal prior to the hearing, which included a location plan, photographs and a revised valuation. Mr Eyston, having seen this information, confirmed at the hearing that he had no objections to it being

submitted. In the circumstances, I gave consideration to this evidence when determining the appeal.

13 The absence in this decision of a reference to any statement or item of evidence placed before me by the parties should not be construed as it having been overlooked when I reached my decision.

**Issues**

14 There had originally been a number of issues in dispute. However, Mr Hampton-Riddington confirmed that only three of these had not been resolved. I was asked to consider the following:

- The zone A rate to be applied;
- an allowance to reflect the appeal property's hard frontage; and
- a reduction in the relativity applied to the rear retail area, situated behind a solid wall.

**Evidence and submissions**

15 The bundle of evidence before me comprised all of the documents exchanged between the parties as part of the challenge process: the appellant's challenge submission and full supporting information; the Valuation Officer's initial response; the exchanges of evidence between the parties; plans of the appeal property's internal layout; the Valuation Officer's challenge case decision notice, rental and assessment evidence; location plans; photographs and details of the appeal property and those cited as comparable. I was also provided with the extra information submitted by Mr Hampton-Riddington.

16 In his additional information, Mr Hampton-Riddington provided a revised assessment for the appeal property. He still proposed £33,000 RV however, it was based on a zone A rate of £275/$m^2$ less 12.5% to reflect hard frontage (£240.63/$m^2$). The relativity applied to the masked retail area was also lower than that applied by the Valuation Officer. To support this valuation, Mr Hampton-Riddington outlined in his challenge documentation and oral presentation the reasons he believed the appeal property's current valuation was excessive. Very briefly these included:

i. An overview of the appeal property's rent of £33,000 per annum (pa) set in 2013 for a new letting with effect from 9 August 2013. Mr Hampton-Riddington considered this to be good evidence in the subject appeal.

ii. Details of comparable assessments for properties on Gloucester Road which had allowances either as an end allowance or within the zone A rates adopted to reflect factors such as layout and hard frontage.

iii. The rental evidence for the comparable properties provided by the Valuation Officer related to smaller properties, which Mr Hampton-Riddington considered were not comparable to the appeal property.

iv. Mr Hampton-Riddington argued that the properties relied on by the Valuation Officer were on the other side of Gloucester Road and it was not unusual for rents to vary on different sides of the same road.

v. 60-60A Gloucester Road had an allowance of 12.5%, to reflect that it had a typical bank hard frontage, which he considered supported a 12.5% allowance in the appeal property's assessment, also to reflect hard frontage.

vi. Mr Hampton-Riddington determined that a zone A rate of £275/m$^2$ was reasonable for the appeal property based on the fact that the location plans showed a natural break at Neville Road and the appeal property was accessed via this road.

vii. In valuing the masked retail area lower than the Valuation Officer, Mr Hampton-Riddington explained that he had departed from the nationally approved scales of a relativity of A/8 and used A/10 to reflect that this area was separate, being divided by a solid wall.

17 In light of the above, Mr Hampton-Riddington sought confirmation of his proposed assessment of £33,000 RV with effect from 1 April 2017.

18 On behalf of the Valuation Officer, Mr Eyston referred to the rental and assessment schedules he had provided. In the challenge decision and in his oral presentation he submitted that, having regard to the basket of rents available, the appeal property was correctly assessed using a zone A rate of £340/m$^2$ and all of the applicable allowances had been granted.

19 The appeal property had been visited and amendments had been made to the areas. The toilets had been included in zones A-C however, as they were shared between the public and staff, they had been removed and added to the valuation with their own line entries but at 50% of the normal rate. The appeal property was found to have an unconventional layout, given that customers had to walk down a narrow hallway to access the large seating area to the rear of the property. There were also multiple changes to floor levels as evidenced in the photographs. The steps restricted wheelchair access but a wheelchair accessible entrance existed to the side along Neville Road. The outside seating area was also broken into three rather than being one large area. To reflect layout issues a 5% end allowance was applied to the assessment.

20 Addressing the hard frontage allowance of 12.5% sought by the appellant, Mr Eyston agreed that the appeal property had a frontage which restricted views into the premises. However, a 7.5% allowance had been applied to the zone A rate to reflect this, which was in line with that applied to 248 and 317-319 Gloucester Road for the same issue.

**Decision and reasons**

21 In arriving at my decision, I had regard to rating legislation laid down by Parliament where Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999, provided that:

> "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.

22 In respect of an appeal against an entry in the 2017 rating list, the rental levels were to be taken as those passing at the AVD of 1 April 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841).

23 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.

24 The Lands Tribunal judgment in *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141 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.

25 As outlined in *Lotus and Delta*, the starting point was consideration of the actual rent but the circumstances as to time, subject matter and conditions relating to the statutory requirements had to be taken into account when deciding the weight to attach to it. The appeal property was rented at £33,000 pa, with effect from 9 August 2013, for a period of 15 years with five yearly rent reviews. This rent had not been increased at the review in 2018. There was also an initial rent-free period of six months at the commencement of the lease. I did not find this rental evidence to be the most persuasive, given that the rent had been set two years prior to the AVD and therefore, in my view, did not necessarily give a good indication of the market conditions/rental levels prevalent at 1 April 2015. There was also rental evidence for comparable properties that had been set closer to the AVD that I considered to be more reliable. For this reason, I placed low weight to the appeal property's rent.

26 I found the best approach to determining this appeal was by reference to the basket of rents put forward by the Valuation Officer for properties within the immediate locality, excluding the 2013 rents for the appeal property and 303 Gloucester Road, as market conditions may have been different at that time. Mr Hampton-Riddington had indicated that rents on the opposite side of the street to the appeal property could vary however, there was no evidence presented to confirm that they were higher. The rents set in 2014 and 2015 were for 286, 274, and 264 Gloucester Road and related to smaller properties however, all were in close proximity to the appeal property as shown by the location plan. From this evidence, I noted the following:

- 286 Gloucester Road was operated as a café. It had been subject to a new letting with a 10-year lease on a full repairing and insuring (FRI) basis. The rent of £12,000 pa had been set in January 2014 and little adjustment was required as there was no rent-free period. The rent analysed to £340/m$^2$.
- 274 Gloucester Road had an adjusted rent of £9,325 pa, effective from 25 March 2015. This had analysed to £461/m$^2$.
- 264 Gloucester Road was subject to a new lease with effect from 1 December 2015 at an adjusted rent of £11,895, which analysed to £290/m$^2$.

27 Mr Hampton-Riddington explained that properties from 281 to 291 Gloucester Road were assessed at £250/m$^2$ until the road met with the Neville Road junction. He considered it reasonable for a similar rate to this to be applied to the appeal property given its access was via Neville Road. However, after looking at the location plan, I am satisfied that the junction with Neville Road provided a natural break and that the increase in values applied after Neville Road was supported by the rental evidence. On balance, I was satisfied that the majority of the rental evidence did not show the current zone A rate of £340/m$^2$ adopted in the appeal property's assessment to be excessive. The above properties, subject to rental evidence, had been valued at a zone A rate of £350/m$^2$ and therefore the appeal property's assessment was not out of line with these comparable properties.

28 I then addressed the allowance to be applied to the zone A rate to reflect the appeal property's hard frontage. Mr Hampton-Riddington had sought 12.5%, based upon the level applied in the assessment of 60-60A Gloucester Road. The Valuation Officer had applied 7.5% in line with the allowance in the assessments of 317-318 and 248 Gloucester Road.

29 From the location plans and photographs provided, I determined that 60-60A Gloucester Road did not provide the best evidence as there were properties in closer proximity to the appeal property that had hard frontage allowances. 248 Gloucester Road was on a corner almost opposite the appeal property and 317-319 Gloucester Road was also in close proximity. Looking at the photographs provided, I was not persuaded that the appeal property's frontage was worse than those of 248 and 317-319 Gloucester Road and therefore I concluded that the 7.5% allowance in the Valuation Officer's zone A rate was supported.

30 Having accepted the Valuation Officer's zone A rate, together with his level of allowance reflective of the hard frontage, I then addressed the remaining issue, namely, the price to be applied to the masked retail area within the appeal property. Mr Hampton-Riddington had applied £27.50/m$^2$ (his zone A rate divided by 10) and the Valuation Officer had applied £42.50/m$^2$ (his zone A rate divided by 8). After looking at the layout plans and noting Mr Hampton-Riddington's contention that this was situated behind a solid wall, I was persuaded that he had demonstrated that this area should be valued using his proposal relativity. I therefore amended the Valuation Officer's assessment of the appeal property as shown below and came to a revised valuation of £41,500 RV. As this assessment was lower than that set out in the Valuation Officer's challenge decision notice, the appeal was allowed in part.

| Floor | Description | Area m$^2$/unit | Price per m$^2$ /unit | Value £ |
|---|---|---|---|---|
| Ground | Retail zone A | 69.54 | 314.50 | 21,870 |
| Ground | Retail zone B | 61.31 | 170.00 | 10,423 |
| Ground | Retail zone C | 45.03 | 85.00 | 3,828 |

| | | | | |
|---|---|---|---|---|
| Ground | Remaining retail zone | 22.86 | 42.50 | 972 |
| Ground | Retail area | 162.73 | 34.00 | 5,533 |
| Ground | Public toilets | 4.55 | 17.00 | 77 |
| Ground | Public toilets | 8.96 | 17.00 | 152 |
| Ground | Public toilets | 13.72 | 17.00 | 233 |
| Ground | Outdoor seating | 91.92 | 10.00 | 919 |
| Total | | | | 44,007 |
| Less 5% layout | | | | 41,807 |
| | | | Say | £41,500 RV |

**Order**

31 Under the provisions of paragraphs (4) and (9) of Regulation 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Tribunal orders the Valuation Officer to alter the appeal property's entry in the Rating List within two weeks of the date of this order to show a revised assessment of £41,500 RV with effect from 1 April 2017.

**Refund of fees**

32 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 (Alteration 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:** 10 March 2022

**Appeal Number**: CHG100407898