VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal; shop and premises; rateable value disputed; the comparable assessments demonstrated that the subject hereditament was not over assessed; the rateable value for the subject hereditament is confirmed as £31,250 effective from 1 April 2017.

APPEAL NUMBER: CHG100426484

RE: Unit 1, Superdrug Stores, Birmingham, B23 6RS

BETWEEN:	Superdrug Stores Plc	Appellant
	and	
	D Virk (Valuation Officer)	Respondent

PANEL: Ms C Caiquo (Chairperson)
Ms A Verma

CLERK: Mr P Hill IRRV Tech

HEARING: Remote Hearing 3 on 6 March 2023

APPEARANCES: Mr J Davies of Gerald Eve (on behalf of the appellant)
Mr T Chakadini (on behalf of the respondent)

Summary of Decision

1. The appeal is dismissed.

2. The panel is satisfied that –

   a. the rateable value shown in the 2017 non-domestic rating list for the subject hereditament of £31,250, at a zone A rate of £275/m^2 is not excessive; and that

   b. no end allowance for shape is applicable.

Introduction

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

4. This appeal has been brought pursuant to Regulation 13A of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 [SI 2009 No 2268]. The appeal challenges the respondent's decision that the appellant's proposal (also known as a "challenge" under the "check, challenge, appeal" framework) was not well-founded. The challenge was submitted on 20 October 2020. The appeal to this Tribunal was made on 12 August 2022, following the Valuation Office's Decision Notice dated 12 April 2022. Within the Challenge decision, the Valuation Officer proposed to reduce the appeal property's assessment from £33,750 Rateable Value to £31,250 Rateable Value, with effect from 1 April 2017. The reduction reflected a reduced zone A rate from £300/m^2 to £275/m^2.

5. Mr J Davies, a member of the Royal Institute of Chartered Surveyors, appeared on behalf of the appellant as expert witness and as advocate. He was not on a conditional or success related fee. In his declaration, Mr J Davies stated that he understood and accepted that his duty was to the tribunal in giving his evidence, that he would comply with this duty, and the requirements of his professional body, regardless of whether or not the evidence supported the appellant's case.

6. Mr T Chakadini, a member of the Royal Institute of Chartered Surveyors, appeared on behalf of the respondent as advocate and expert witness.

Issue

7. The issues disputed concerned the correct zone A rate to be applied to the appeal property's assessment, plus whether or not it was appropriate to grant an end allowance for shape. The appellant sought a reduction of the rateable value from £31,250 to £27,250, which reflected a reduced zone A rate from £275/m² to 250/m² with effect from 1 April 2017. The appellant also sought an end allowance of 5% for shape that was included in the 2010 list.

Decision and reasons

8. The parties' representatives took the panel through their respective submissions and evidence orally at the hearing. The panel carefully considered the parties' respective submissions, together with the legislative tests set out above. The panel was grateful to the parties' representatives for their submissions.

9. The subject hereditament must be valued for the purpose of non-domestic rating on the basis of the rent at which it might reasonably be expected to let from year to year on a number of assumptions (see paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988 (the 1988 Act)). The date of the hypothetical rent was 1 April 2015 (antecedent valuation date or AVD). Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 (material day) for this appeal. When assessing the rateable value (RV) of any property, rating law also requires that the property must be assumed to be 'vacant and to let', and in the state set out in Schedule 6, paragraph 2(7) of the1988 Act, in relation to both the physical nature of the property and its mode or category of use.

10. Where rental evidence is available, the weight to be attached should be considered in light of the following six propositions set down in *Lotus & Delta* v *Culverwell (VO) and Leicester City Council* [1976] RA 141, namely:

    a. Where the hereditament which is the subject of consideration is actually let, that rent should be taken as the starting point.

    b. The more closely the circumstances under which the rent agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of gross value in section 19(6) of the General Rate Act 1967 the more weight should be attached to it. (These statutory requirements now contained in Schedule 6, Para 2 (1) Local Government Finance Act 1988 (as amended by the Rating (Valuation) Act 1999)).

c. 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.

d. 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.

e. In light of all the evidence an opinion can then be formed of the value of the subject hereditament, the weight to be attached to the differing types of evidence depending on the one hand the nature of the actual rent and on the other hand, on the degree of comparability found in other properties.

f. In those cases where there are no rents available of comparable properties a review of other assessments may be helpful but, in each circumstance, it would be difficult to reject the evidence of the actual rent.

11. The subject hereditament is a 1980's retail unit of traditional brick and pitch tiled roof construction. The hereditament is located approximately 4 miles north east from Birmingham city centre, with close links to junction 6 of the M6.

12. The panel turned itself first to the rent on the subject hereditament, the first proposition within the *Lotus and Delta* judgment. The rent was set at £35,000 on 25 December 2013, 15 months prior to the AVD of 1 April 2015. This rent analysed to £290.53/m^2. On 4 June 2019, just over 4 years after the AVD, the rent was reduced to £27,000, which analysed to £253.00/m^2. *Lotus and Delta* sets that the starting point should be the rent on the subject hereditament. The panel notes that the two rents in respect of the appeal property demonstrated a fall in rental value between December 2013 and June 2019. In terms of the assessment for the 2017 list, the panel placed greater weight on the rent effective from 25 December 2013, as it was set closer to the AVD.

13. The panel then turned itself the third proposition within *Lotus and Delta*, that being rents set on similar properties. The panel had been provided with rents in respect of seven other properties, which had been set between 7 January 2014 and 1 September 2018. Those rents analysed between £185.46/m^2 and £591.76/m^2. As such, on the face of it, the panel accepted that a zone A rate of £275/m^2, fell within the middle of those ranges.

14. The main comparable proposed by the appellant's representative was Unit 2, 94 – 96 High Street, Erdington. Unit 2, 94 – 96 High Street is adjacent to the subject hereditament and listed as a shop and premises, the same mode and

category as the subject hereditament. The rent was set on 2 July 2015 at £25,000, which analysed to £232.79/m^2. The appellant's representative argued that more weight should be given to the rent set on Unit 2, 94 – 96 High Street than the rent passing as at the AVD on the subject hereditament. The appellant's representative referred to a GOAD plan, which highlighted the two units. He argued that exposure to the high street and footfall for the two units are the same.

15. The respondent's representative argued that Unit 2, 94 – 96 High Street was a new letting 3-months post AVD, was vacant for 14-months and had been advertised previously at a higher rent. The respondent's representative also stated that the rent was not representative of how the market was performing.

16. 83 High Street is proposed as the second comparable by the appellant's representative. This is listed as a shop and premises with a rent of £28,500 set on 25 December 2015, 9-months after the AVD. The analysed rent for this property is £261.04/m^2. This property is located on the opposite side to the subject hereditament and slightly further up the high street. The respondent's representative considers 83 High Street to be of medium weight in significance. The panel accepts that 83 High Street is a useful comparable, although it should be noted the rent was set 9-months after the AVD which does diminish this slightly as a comparable.

17. The respondent's representative considered the rent on 114 -118 High Street to be good evidence. This was a new letting on 30 September 2014, which analysed to £185.46/m^2. The panel note that the passing rent on 114-118 High Street appeared low and out of kilter with the rents in the locality. 114-118 High Street had been valued at a zone A rate of £285/m^2.

18. A settlement was provided by the respondent's representative and accepted as late evidence by both parties. The settlement was in respect of 87 High Street, a shop and premises opposite the subject hereditament. A settlement of £275/m^2 was agreed on 31 January 2023. The panel found the settlement useful, being in respect of a comparable shop unit located opposite to the subject hereditament.

19. Having reviewed the basket of evidence, the panel concludes that the current zone A rate applied to the appeal property of £275/m^2 is not excessive. In arriving at its decision, the panel noted that the rent passing on the subject property was agreed just 15 months prior to the AVD and analysed to £290.53/m^2. When applying *Lotus and Delta*, the correct starting point was the rent passing on the subject property, making adjustments if required to bring it into line with the statutory definition of rateable value. After having regard to the

whole basket of rents, the panel concluded that the current zone A rate was fair and reasonable.

20. The panel then turned itself to the appellant's representative's proposal that a 5% end allowance be provided for shape. The panel had been provided with a floor plan, which illustrated a kink to the rear of the shop. The appellant's representative described the subject hereditament as being elongated and highlighted that Unit 2, 94 – 96 High Street (adjacent property) is a similar shape and has an end allowance of 5%. A 5% allowance had been applied to both the appeal property and Unit 2, 94-96 High Street in respect of their 2010 rating list assessment. However, the 5% allowance had only been carried over for Unit 2, 94-96 High Street. The appellant's representative described the disadvantage of the appeal property's shape and highlighted that it was a long distance for stock refilling and staff welfare resources to the rear of the store.

21. The respondent's representative could not clarify why Unit 2, 94 – 96 High Street still had an end allowance and quoted *Ladies Hosiery and Underwear Ltd v West Middlesex Assessment Committee* [1932] 2 KB 679, in that a mistake on one property should not be compounded by applying it to other properties. The respondent's representative stated that the appeal property is a standard shape until the rear, akin to most shops and that the passing rent has already allowed for the shape of the subject hereditament.

22. It is noted by the panel that the appeal property's assessment in the 2010 rating list had a 5% allowance for shape. However, the panel was of the opinion that the evidence should be looked at afresh for each list. The appeal property had to be considered on its own merits and just because an allowance had previously been applied did not automatically mean one should be applied to a new list. The panel was not convinced by the appellant's representative's submissions in respect of a disability. The panel considered that no substantial reasons or impact were provided in support of the 5% end allowance for the subject hereditament. The appellant's representative cannot rely on neighbouring properties having an end allowance, it is the impact of the subject hereditament that must be considered. The panel also accepted the respondent's representative's view that the passing rent already factored in the shape of the property. The panel therefore concluded an end allowance for shape was not warranted.

23. Having regard to the above findings, the panel dismissed the appeal. The panel determined that the current rateable value of £31,250 which incorporated a zone A rate of £275/m^2 is not excessive. The panel also determined that an end allowance for shape was not warranted.

Date: 22 March 2023

Appeal number: CHG100426484

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.