THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; Challenge against Compiled List entry; Shop and Premises; accuracy of rateable value; rental and comparable evidence considered; found that weight of evidence supported a reduction in the assessment of subject property; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141*. Decision: Allowed in Part.*

RE: Ground Floor, 7-11 Vanston Place, London, SW6 1AY

APPEAL NUMBER: CHG100530493

BETWEEN:	MyHealthcare Clinic Ltd (Represented by Altus Group)	Appellant
	and	
	A Ricketts (Valuation Officer)	Respondent

PANEL: Mr J M Imperato (Senior Member)
Mr P Phelps

REMOTE HEARING: 22 September 2022

CLERK: Mr J N Massey

APPEARANCES: Mr J McCarthy (Advocate and Expert Witness) of Altus Group for the Appellant.
Mr G Singh for the Valuation Officer.

Summary of decision

1. Appeal allowed in part. The panel considered that the existing entry in the Rating List for: Ground Floor, 7-11 Vanston Place, London, SW6 1AY (the "subject property") of Rateable Value (RV) £104,000 was excessive and determined the RV at £92,500 with effect from 1 July 2018.

Introduction

2. This was a 2017 Rating List appeal. The appeal property had been entered in the 2017 rating list as ‘Shop and Premises’ at a RV of £104,000 with effect from 1 July 2018.

3. The challenge proposal was submitted by Altus Group on behalf of the appellant and was received by the Valuation Officer on 17 December 2020. It had been made on the grounds that the RV shown in the rating list on 1 July 2018 was wrong. A revised RV of £77,500 was proposed with effect from 1 July 2018.

4. The Valuation Officer issued a challenge case decision notice on 22 November 2021, which stated that based upon the evidence and information available, the rating list entry of £104,000 RV was considered to be reasonable and there would be no amendment.

5. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal has been made on the grounds that the valuation for the hereditament is not reasonable. The appeal was received by the Tribunal on 21 March 2022.

6. The appeal hereditament comprises a retail premises situated in Fulham in West London, five minutes from Fulham Broadway Station. It is currently being used as a health clinic.

7. This document is not intended as a verbatim report of the proceedings, nor is it proposed to reproduce in full all of the parties’ evidence. The absence in this decision of a reference to any statement or item of evidence placed before it by the parties should not be construed as an indication that the statement or item of evidence has been overlooked by the panel.

Issue

8. The issue between the parties concerned the RV of the subject property and specifically, the zone A rate per m² that should apply. The original challenge had sought a revised valuation of £77,500 RV based on a zone A rate of £480 per m². Mr McCarthy, for the appellant, provided an amended valuation in making his appeal seeking a reduction to £83,000 RV based on a zone A rate of £575 per m² and a shape allowance of 10% to reflect the high width/depth ratio of the subject property. Mr Singh, for the VO, sought to defend the existing RV of £104,000 which was based on the existing zone A price of £650 per m² with no shape allowance applied.

Evidence and Submissions

9. Mr McCarthy appeared on behalf of the appellant as both surveyor-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 McCarthy declared that he was instructed on a contingency fee basis. He 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.

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

11. In his challenge and appeal, Mr McCarthy had given details of the rent passing on the subject property, which he stated was £105,000 per annum (pa) effective from 9 January 2018 on a new lease. He stated that in analysing this rent to £661.67 per m^2 the respondent had made no adjustment for the fact that the lease was agreed at half rent for the first two years. Allowing for three months' rent-free, Mr Clayton considered there was effectively an incentive of nine months' rent free which he stated resulted in an adjusted rent of £86,727 pa (£546.51 per m^2) which, in a rising market after the AVD, he suggested indicated that the current RV of £104,000 was excessive.

12. In line with the decision in *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141, Mr McCarthy suggested that the rent on the subject property should be taken as a starting point, and the rent of comparable properties in the locality should also be given weight. He had not provided any comparable properties to suggest that the base rate adopted for the subject property was excessive but had provided comments on those properties submitted as comparable by the respondent, which he considered would, at the AVD have attracted a higher rental value than the subject property.

13. In particular, he referred to 18-22 Vanston Place, the rent on which had been analysed by the respondent to £581 per m^2, and had been assessed at £575 per m^2, which he considered to be fair and reasonable for the appeal property.

14. Mr McCarthy considered that the subject property's width of over 20m resulted in a particularly high zone A area, which produced an excessive RV. He had provided the addresses and photographs of three retail properties which he contended illustrated that such an allowance was applicable to the subject property.

- Tesco Express – Imperial Wharf, London, SW6 2TW – 15% width to depth allowance – estimated width 36m
- Gnd Fl, 117-121 Wandsworth Bridge Road, London, SW6 2TE - 10% width to depth allowance – estimated width 16m
- 437-439 North End Road, London, SW6 1NY - 10% size/quality to depth allowance – estimated width 12.5m

In light of the allowances applied to these three properties, he considered that an allowance of 10% was reasonable for the subject property.

15. In support of such an allowance, he provided details of comparable properties which were between 12.5m and 36m wide, where allowances ranging from between 10% to 15% had been applied.

16. Mr Singh referred to the passing rent on the subject property, which he considered to have been agreed too far from the AVD to be indicative of values prevailing at the AVD. In support of the current RV of the subject property, he had provided a schedule of rents for shops which he considered to be in the same locality as the subject property:

Address	Area m^2	Area (ITZA) m^2	Effective Date	Rent	VOA effective rent	Unit rate (/m^2)	VOA analysed rent
Gnd Flr, 7-11 Vanston Place, SW6 1AY	243.64	158.69	9 Jan 18	£105,000	£105,000	£650.00	£661.67
332 Wandsworth Bridge Road, SW6 2TZ	52.8	20.69	1 Apr 14	£13,000	£13,000	£625.00	£628.32
905 Fulham Road, SW6 5HU	118.06	50.33	1 Mar 15	£32,000	£32,000	£625.00	£635.80
765 Fulham Road, SW6 5HA	118.45	54.01	1 Apr 15	£34,000	£34,000	£625.00	£629.51
12 Dawes Road, SW6 7EN	42.80	23.24	20 Aug 14	£20,000	£14,535	£625.00	£625.43
18-22 Vanston Place, SW6 1AX	102.00	83.64	1 Aug 15	£55,000	£48,721	£650.00	£582.51
907-909 Fulham Road, SW6 5HU	239.86	102.42	23 Dec 15	£70,000	£65,936	£625.00	£713.33
Gnd Flr 23 Vanston Place, SW6 1AZ	86.92	59.27	1 Apr 15	£42,600	£39,724	£625.00	£670.22

Decision and reasons

17. 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;
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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;
>
> 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".

18. 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 antecedent valuation date (AVD) of 1 April 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841).

19. 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 July 2018.

20. Both parties had referred *to Lotus and Delta v Culverwell*. 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.

21. In considering the rent on the subject property, the panel was mindful that no copy of the lease had been provided. However, Mr Singh had not contested Mr McCarthy's adjustment of this rent to £86,727 pa apart from stating that an adjustment should be made for fit-out costs. As this issue had not been raised at the challenge stage, and no evidence of fit-out costs had been provided, the panel was satisfied that Mr McCarthy's adjusted rent was correct. However, this rent had been agreed nearly three years after the AVD, so its weight in determining the rent which would have been agreed on that date was, in the panel's opinion, limited.

22. Mr Singh had provided details of seven comparable retail properties in the SW6 area which he considered were indicative of the locality of the subject property. Mr Singh had referred to Vanston Place as a fashionable 'niche' location, a prominent cut through with good footfall. As there were limited retail premises in this location, he had looked further afield to provide further data from which the correct RV of the subject property could be ascertained. He considered that the subject location was similar, if not superior, to the locations of his comparable properties. The rents on these comparable properties had been agreed on new leases or rent reviews between 1 April 2014 and 23 December 2015 and he had analysed these at between £582.51 per m^2 and £713.33 per m^2 which he considered supported the current rate applied to the subject property.

23. The panel ascertained from questioning that Mr Singh had not visited or inspected the subject property or Vanston Place but had drawn his conclusions from desk-based research. It concluded that there was insufficient evidence from which it could conclude that Vanston Place was a similar or superior retail location to Fulham Road or Wandsworth Bridge Road. The panel noted that Vanston Place is mixed used, comprising residential, retail and other commercial premises as well as a park.

24. The panel therefore considered that the properties located on Fulham Road and Wandsworth Bridge Road were too far from the subject property to be reflective of its location. These properties, along with 12 Dawes Road had been valued in different schemes to the subject property and the panel was satisfied that shops in these localities, being main shopping areas with heavy passing pedestrian traffic, would have attracted higher rents than those situated in Vanston Place and were therefore not comparable locations.

25. That left the panel the two retail premises on Vanston Place to consider. The panel noted that 23 Vanston Place was a Greek/Italian Restaurant, which although valued as a shop, had been fitted out as a restaurant. The panel did not consider that the rent on this property provided a useful comparison as to the rental value of the subject property. It decided that most weight should be placed on the rent agreed on 18-22 Vanston Place, which had been agreed just four months after the AVD and was analysed at £582.51 per m^2. The panel considered that 18-22 Vanston Place was more prominently located than the subject property given its corner plot on the end of the pedestrianised section of Vanston Place. In light of the subject rent, and the rent on 18-22 Vanston Place, the panel therefore considered that a zone A rate of £575 per m^2 was fair and reasonable for the subject property.

26. The panel turned to the appellant's assertion that a 10% allowance was applicable to the subject property to reflect its awkward layout and high width to depth ratio. It noted that Mr McCarthy had provided a plan of the subject property in his submission, and whilst it was not what could be considered a regular shape, there was no evidence that its shape caused any disability. The zone A area was, as in many shops, similar in size to the zone B area, and the panel did not consider that there was anything unusual in this factor. No plans had been provided to show the layout of the comparable properties to demonstrate what it was about their layout which warranted the allowances that had been applied. The panel therefore considered that there was insufficient evidence to persuade it that such an allowance was warranted at the subject property.

27. Having considered both parties' evidence the panel concluded that the zone A rate of £650 per m^2 adopted by the respondent was excessive and that the rate of £575 per m^2 sought by the appeal was fair and reasonable. The panel therefore determined the RV for the subject property to be £92,500. The appeal is therefore allowed in part.

Order

28. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry for Ground Floor, 7-11 Vanston Place, London, SW6 1AY to £92,500 with effect from 1 July 2018, within two weeks of the date of this order.

29. The ratepayer is also entitled to a refund in full 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: 19 October 2022

Appeal number: CHG100530493

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.