VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; challenge against compiled List entry; college and premises; accuracy of rateable value; analysis of rent on comparable properties; Lotus & Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal allowed.

RE: Unit S45 New Shepherds Bush Market, Uxbridge Road, London W12 8LH

APPEAL NUMBER: CHG100530940

BETWEEN:	Portobello Group Ltd	Appellant
	And	
	Mr A Ricketts (Valuation Officer)	Respondent

PANEL: Mr WJ Read (Presiding Senior Member)
Dr J Johnson (Senior Member)

CLERK: Miss F Willson

REMOTE HEARING ON: 9 September 2022

APPEARANCES: Mr M Shapcott of Evans and Payne LLP (on behalf of the appellant)
Ms D Pathak (on behalf of the Valuation Officer as advocate only).

Summary of decision

1. Appeal allowed. The current entry in the Rating List for Unit S45 New Shepherds Bush Market, Uxbridge Road, London W12 8LH (the subject property) is to be reduced to £10,000 rateable value (RV) with effect from 1 April 2017.

Introduction

2. The appeal arises from a challenge made by the appellant's representative on 26 March 2020. The subject property was part of a single hereditament in the Rating List with an RV of £204,000 effective from 1 April 2017. The appellant's agent sought the split of that hereditament into 81 separate assessments. This was found to be well founded and the Rating List was amended on 20 January 2020. Mr Shapcott put a challenge in against the RV for the subject property.

3. The challenge was in respect of the entry in the rating list at £24,750 RV effective from 1 April 2017. The appellant initially sought a revised assessment of £13,000 RV. After considering the merits of the challenge, the Valuation Officer determined that it was not well founded and issued a decision notice to this effect on 24 November 2021. The appellant's representative made an appeal to this Tribunal which was received on 28 October 2021.

4. The subject property is a market stall located in New Shepherds Bush market on Uxbridge Road which runs from Shepherds Bush Green to Acton. The subject property is 2,198.31m^2. The appellant is the freehold owner of the subject property and the whole of New Shepherds Bush Market.

5. 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 item of evidence, should not be construed as it having been overlooked.

6. Mr Shapcott 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 Shapcott's declaration of truth included a statement that he was not instructed under any conditional fee arrangement. Mr Shapcott 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.

Preliminary Issue

7. Mr Shapcott raised a preliminary issue before the panel and that was an agreement had been reached to settle this case between the parties settling on an RV of £10,000 for the subject property. Emails were exchanged between the parties and Mr Shapcott believed that the agreement was final. The day before the hearing he received another email from Ms Pathak which stated there had been no agreement as the subject property measurements were still in dispute and the photographs of the subject property led her to believe that the first floor storage was of a better quality finish than she had been led to believe.

8. Ms Pathak submitted that she needed to conduct a site visit and could not agree to a revised RV without measuring the subject property and viewing the first floor storage area. Ms Pathak confirmed in open tribunal that she had withdrawn her offer of settlement on the subject property and wished to contend that the correct RV on the subject property is £24,750.

9. The panel found that Ms Pathak was entitled to withdraw an offer of settlement especially if she believed she now had conflicting evidence about the size and quality of the subject property. The panel held that it was in the interests of justice for the panel to hear the case and make a decision based on the evidence presented by both parties.

Issue

10. The issue between the parties is the correct RV of the subject property with effect from 1 April 2017.

Evidence and submissions

11. Mr Shapcott submitted a bundle of evidence which included details of the subject property, the issues in dispute, details of comparable properties and a calculation of his revised RV.

12. With reference to his comparable properties and the rent on the subject property he asked the panel to confirm a RV of £10,000 from 1 April 2017.

13. Ms Pathak referred the panel to the challenge application and decision notice.

14. Ms Pathak asked the panel to confirm the RV of £24,750 with effect from 1 April 2017.

Decision and reasons

15. 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 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.

16. 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.

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

    - 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)).

- 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.

- 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.

- 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.

- 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.

17. Mr Shapcott explained that he had physically inspected the subject property and provided the measurements of the stall. He stated that he is a qualified surveyor and that his measurements had been relied upon to set the RV of all the stalls in the market.

18. Under questioning he confirmed that any other qualified surveyor who visited and measured the stall would agree the same size as it was a simple process that was not open to interpretation. Upon setting the RVs for all the stalls on the market the Valuation Officer had used his measurements and had never raised any concerns until yesterday. In fact they still accepted all the measurements for the other stalls which were not the subject of this case.

19. He submitted that if Ms Pathak had concerns about the measurement these could have been raised at either the check or challenge stage and she had had since 2019 to visit the subject property. He argued that to raise concerns over the measurement of the subject property the day before the hearing was not in the interests of justice and he asked the panel to find the RV of the subject property to be £10,000 as previously offered and agreed.

20. The panel noted the measurements were taken by Mr Shapcott during a visit to the subject property and that they were the same as any other surveyor would have determined. It therefore put weight on his measurements.

21. Mr Shapcott submitted that the RV of the subject property was not in alignment with the rent passing on the property at the AVD. He explained that the Valuation Officer had not provided any comparable evidence to support the RV applied to the subject property. The rent on the subject property included rates and services and so an adjustment of one third would need to be made to bring the rent in line with the rating hypothesis. The rent on the subject property was £12,000 per annum which once adjusted became £8,000 per annum. In his opinion this supported the RV of £10,000 as previously agreed between the parties.

22. Ms Pathak submitted that in order for the Valuation Officer to maintain a fair and accurate list an inspection was sometimes required. It did not mean that they needed to visit every property but when a query had been raised then they would normally carry out a visit at that point. She stated that she had no reason to query the measurement provided by Mr Shapcott until recently. Further the quality of the first floor accommodation had only been put into doubt when she had received the photographs of the subject property yesterday. She therefore had no alternative but to withdraw the offer until she had been able to carry out a site visit.

23. She therefore submitted that the panel should confirm the present entry for the subject property in the Rating List at an RV of £24,750 with effect from 1 April 2017.

24. The panel found that Ms Pathak had agreed with and used the measurements supplied by Mr Shapcott and had not carried out a site visit for herself. The sudden decision that the measurements were in dispute the day before the hearing when the case had been progressing through the Check and Challenge stages for over three years was unhelpful. The parties should have finalised their evidence in accordance with the Tribunal's standard directions and agreed the areas of dispute before the hearing and this had failed to happen in this case.
25. On balance, the panel put weight on the measurements provided by Mr Shapcott as he had visited the site and measured the subject property in accordance with the standard measuring code. The panel was more persuaded by the evidence provided by Mr Shapcott of the adjusted rent on the subject property being £8,000 and so put weight on the suggested RV of £10,000.

26. The panel therefore confirmed the RV be reduced to £10,000 with effect from 1 April 2017.

Order

27. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry to £10,000 with effect from 1 April 2017 within two weeks of the date of this order.

28. 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. The refund will take six weeks to process.

Date: 3 October 2022

Appeal number: CHG100530940

Right of appeal

Any party who is aggrieved by the Tribunal's decision has the right of appeal to the High Court on a question of law. Any such appeal should be made within four weeks of the date of this decision notice