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.*

RE: Ground Floor Right, 132 Commercial Street, London, E1 6NF

APPEAL NUMBER: CHG100563649

BETWEEN:	URBN UK Ltd t/a Urban Outfitters (Represented by Simon Tivey Rating)	Appellant
	and	
	Andrew Ricketts (Valuation Officer)	Respondent

PANEL:	Mrs A E Fielder (Senior Member) Dr PAR Thomson
REMOTE HEARING:	19 January 2023
CLERK:	Mr J N Massey
APPEARANCES:	Mr S Tivey of Simon Tivey Rating for the Appellant. Mr A Khan for the Valuation Officer.

Summary of decision

1. Appeal Allowed. The panel considered that the existing entry in the Rating List for the appeal property of Rateable Value (RV) £500,000 was excessive and determined that the RV proposed by the appellant of £395,000 was reasonable.

Introduction

2. This was a 2017 Rating List appeal. Ground Floor Right, 132 Commercial Street, London, E1 6NF (“the appeal property”) had been entered in the 2017 rating list as ‘Shop and Premises’ at a RV of £500,000 with effect from 1 April 2017.

3. The challenge proposal was submitted by Simon Tivey Rating on behalf of URBN Ltd and was received by the Valuation Officer on 20 January 2021. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was wrong. A revised RV of £395,000 was proposed with effect from 1 April 2017.

4. The Valuation Officer issued a challenge case decision notice on 22 March 2022, which stated that based upon the evidence and information available, the rating list entry of £500,000 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 22 June 2022.

6. The appeal hereditament comprises a shop situated on the ground floor in a parade of shops and restaurants on the East side of Commercial Street, in a building converted from a former tobacco factory. It is located close to Spitalfields Market around half a mile from Liverpool Street station and a quarter of a mile from Shoreditch High Street station. The survey details and area of the subject property of 746m^2 (348.06m^2 in terms of zone A (ITZA)) are agreed by the parties.

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 that statement or item of evidence has been overlooked by the panel.

Issue

8. The issue between the parties concerned the RV of the appeal property and specifically, the zone A rate per m² that should apply. The original challenge had sought a revised valuation of £385,000 based on an assessment of £600 per m^2 for the subject property on an overall basis. During the challenge stage, Mr Tivey had subsequently accepted that zoning was the best approach and sought a reduction in the zone A rate to £1,125 per m^2. Mr Tivey also sought a 10% allowance for extensive frontage and stated that the three car parking spaces values at £2,800 per space did not exist. The appeal sought an amended RV of £395,000 with effect from 1 April 2017.

9. Mr Khan defended the current valuation of the subject property at RV £500,000, based on a zone A rate of £1,400 per m^2 less a 10% allowance for irregular shape and extensive frontage, but including three car parking spaces. The uplift of £7 per m^2 for air conditioning was agreed by the parties.

Evidence and Submissions

10. Mr Tivey 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 Tivey's declaration of truth included a statement 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.

11. 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.

12. In his challenge and appeal, Mr Tivey had given details of the rent passing on the subject property. The appeal property was leased on a 12-year lease from 23 August 2010 at £240,000 per annum (pa) with a six-month rent-free period. The first review took place after five years on 23 August 2015 at which time the rent was agreed at £395,000 pa for the first two years, £405,000 for the third year and £415,000 for the fourth and fifth years. He had adjusted this stepped rent on a straight-line basis to achieve an average rental of £405,000 pa, which gave an analysed rent of £1,164 per m^2. He considered that as this was a review to an open market value, less than five months after the AVD, it provided the best evidence as to the correct RV for the subject property.

13. Mr Tivey considered that the location of the subject property, on the northerly section of Commercial Street, was peripheral to the rest of Commercial Street which is closer to the City fringes and Spitalfields Market. He considered that retail rental values at the AVD were lower in the subject property's location than in those locations and demonstrated this by referring to the rents on two neighbouring retail units at 132 Commercial Street:

Address	Area (ITZA)	Adjusted Rent	Analysed rent	VO Comments
Gnd Flr Left Unit A,132 Commercial Street	106.59m^2 (76.67m^2)	£90,000 pa 17/10/2014	£1,174/m^2	New ten-year FRI lease, devalues to £908/m^2 if include 12 month rent free period
Gnd Flr Left Unit D,132 Commercial Street	321.59m^2 (140.55m^2)	£149,000 pa 1/2/2014	£1,042/m^2	New ten-year FRI lease, devalues to £1,001/m^2 if using current survey details of 148.8m^2 ITZA.

14. Mr Tivey considered that in accordance with the decision in *Lotus and Delta v Culverwell (VO)* [1976] RA 141 the most weight should be given to the rent on the subject property, which was agreed on a renewal less than five months after the AVD. He considered that the rents on the two most similar properties, in the same block as the subject property, was the next best evidence. He considered that this evidence demonstrated that the tone of £1,400 per m^2 adopted by the respondent for these three retail units was excessive and indicated that a zone A rate of £1,125 per m^2 was reasonable. Adopting this rate less a 10% discount for extensive frontage and unusual shape produced an RV of £395,000.

15. Having inspected the premises, he had found no evidence of the three car parking spaces and these are not mentioned in the lease. He therefore considered that the addition of £8,400 for three car parking spaces in the current valuation should be removed.

16. In line with the decision in *Lotus and Delta v Culverwell (VO)* [1976] RA 141 Mr Khan argued that whilst the rent on the subject property should be taken as a starting point, the rent of comparable properties in the locality should also be given weight. He considered that less weight should be given to the subject rent as it was a stepped rent and required

adjustment and was based on a review rather than a renewal or new letting. He considered that the basket of rents on similar units in the locality supported the existing tone of £1,400 per m^2 at which each had been assessed.

Address	Area (ITZA)	Adjusted Rent	Analysed rent	VO Comments
Gnd Flr Right, 132 Commercial Street	746m^2 (348.05m^2)	£405,000 pa 1/8/2015	£1,164/m^2	Subject property – rent review 23/8/2015
Bst & Gnd Flr, 150A Commercial Street	142m^2 (33.33m^2)	£57,804 pa 6/1/2014	£1,734/m^2	New ten-year FRI lease
Bst & Gnd Flr, 139 Commercial Street	58.3m^2 (24.0m^2)	£34,975 pa 10/2/2014	£1,457/m^2	New ten-year FRI lease
Bst & Gnd Flr, 105b Commercial Street	99.19m^2 (35.32m^2)	£75,000 pa 26/5/2014	£2,123/m^2	New five-year FRI lease
114 Commercial Street	1182m^2 (339.19m^2)	£535,000 pa 11/8/2015	£1,578/m^2	Lease renewal – ten years FRI (assessed as Showroom and Premises on overall basis)
Bst & Gnd Flr, 94-96 Commercial Street	232.43m^2 (87.94m^2)	£107,500 pa 18/12/2017	£1,222/m^2	New twenty-year FRI lease 1/5/2003, Review December 2017 – Challenged not agreed at £1,400 per m^2 – no appeal.

17. Mr Khan explained that the 10% allowance had already been included in the current valuation to reflect the extensive frontage and irregular shape of the subject property. Although Mr Khan had not inspected the subject property, he noted that a record of inspection in 2011 showed that it benefited from three parking spaces, and it would be reasonable to assume that they would be utilised in this location and would be of value to the appellant.

Decision and reasons

18. 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;

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".

19. 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).

20. 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.

21. 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.

22. The appellant's representative had relied heavily on the subject property's rent to justify a reduction in its RV. Mr Khan had referred to the stepped nature of the rent agreed on review, stating that the appellant's adjustment to £405,000 pa was based on a straight-line calculation rather than using present value and therefore held less weight. The panel noted that Mr Khan had not provided an alternative calculation of the adjusted rent, and in considering the fact that it only increased on average by just over 1% each year, were not of the opinion that any such difference in approach would be significant. The panel noted that the subject rent had analysed to £1,164 per m^2 which was significantly lower than the current tone of £1,400 per m^2.

23. In considering the comparable properties submitted by the respondent, the panel noted that apart from 114 Commercial Street, they were all significantly smaller than the appeal property. The panel considered that the location of the subject property further from the Spitalfields Market and City Fringes would have a detrimental effect on rental value and considered that this was demonstrated by the rents agreed on the subject property and those of the two adjacent retail units.

24. Although 114 Commercial Street assessed as a Showroom and Premises on an overall basis at £600 per m^2, the respondent had carried out a calculation of its accommodation in terms of zone A and analysed its passing rent to determine a zone A rate of £1,578 per m^2. The respondent considered that this analysis along with the basket of rents for other retail units on Commercial Street supported the adopted rate of £1,400 per m^2 for the subject property. Mr Tivey had referred to the differences between the subject property and 114 Commercial Street, as although the latter had some retail area on the ground floor, parts were used for design and manufacturing areas and were spread over multiple floors. For this reason, the panel did not consider that it should place any significant weight on this

zonal analysis of the rent of 114 Commercial Street in determining the correct rate to be applied to the subject property.

25. Overall, the panel considered the most comparable properties were those adjacent to the subject property at 132 Commercial Street. The rents for these two properties had been agreed between six months and a year before the AVD and had analysed at £1,174 and £1,042 per m^2. The panel considered that these two rents and that of the subject property indicated that the tone of £1,400 adopted for the subject property was excessive and supported the tone of £1,125 per m^2 proposed by the appellant.

26. With regard to the three car parking spaces included in the respondent's valuation, the panel considered that there was no photographic or other evidence before it to show the location of these spaces or that they existed. It therefore concluded that the addition of £8,400 for three parking spaces should not be included in the valuation for the subject property.

27. Having considered both parties' evidence and the rental analysis for properties in the locality, the panel concluded that the unadjusted rate of £1,400 adopted by the respondent was excessive and that the rental evidence for the subject property and the two adjacent retail units supported a reduction to £1,125 per m^2.

28. The panel therefore concluded that the appellant had demonstrated that a reduction in the RV of the subject property to £395,000 was reasonable and the appeal is therefore allowed.

Order

29. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry for Ground Floor Right, 132 Commercial Street, London, E1 6NF to £395,000 with effect from 1 April 2017, within two weeks of the date of this order.

30. 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 around six weeks to process.

Date: 9 February 2023

Appeal number: CHG100563649

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.