

THE VALUATION TRIBUNAL FOR ENGLAND



Non-domestic rating; 2017 Rating List appeal; pharmacy and premises; price per m² in dispute; rental evidence; comparable assessments; appeal dismissed.

RE: Clay Lane Pharmacy, 5 Clay Lane, Coventry CV2 4LJ

APPEAL NUMBER: CHG100564215

BETWEEN: Shiraz & Sons T/A Clay Lane Pharmacy Appellant
and

Mr D Virk, Valuation Officer
Respondent

PANEL: Mr G Coombes (Senior Member) and Dr P Thomson

CLERK: Mrs L Horne

REMOTE HEARING ON: Tuesday 31 January 2023

APPEARANCES: Mr M Iles from Altus Group, representing the appellant
Miss L West representing the Valuation Officer

Summary of decision

- 1 Appeal dismissed. The panel confirmed the rateable value (RV) of £31,500 with effect from 1 April 2017.

Introduction

- 2 This is a 2017 rating list appeal. Clay Lane Pharmacy, 5 Clay Lane, Coventry CV2 4LJ, (the 'appeal property') had been entered in the 2017 rating list as 'pharmacy and premises' at a RV of £31,500 with effect from 1 April 2017.
- 3 The challenge proposal was submitted by Altus Group on behalf of Shiraz & Sons T/A Clay Lane Pharmacy 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 inaccurate. A revised RV of £20,000 was proposed with effect from 1 April 2017.

- 4 The Valuation Officer issued a challenge case decision notice on 9 March 2022 which stated that based upon the evidence and information available, the rating list entry was reasonable and there would be no change to the list entry of £31,500 RV.
- 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 6 July 2022.
- 6 Mr Iles 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), his declaration of truth included a statement that he was instructed under a contingency fee. Mr Iles declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and that 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.
- 7 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).
- 8 The panel therefore considered the "expert" evidence and attached such weight to it as it saw fit.
- 9 The appeal property is a pharmacy and premises located on the ground floor of Clay Lane Health Centre, a modern purpose-built health centre constructed in 2013. The present valuation of £31,500 RV is based upon a total area of 77.34m² and a base rate of £400 per m².
- 10 This tribunal decision document is not and does not purport to be a verbatim record of proceedings.

Preliminary issue

- 11 Mr Iles requested that the panel disallow the use of three rental comparables scheduled in the Valuation Officer's Regulation 17 Notice, as he had been denied the right to verify the information contained in the original forms of return (FOR) documents or any other version. He had requested to view the documents on 6 September 2021, but when he visited the Manchester office on 31 May 2022 they were not available. The Valuation Officer had offered access to the documents last week, however, this did not leave sufficient time for Mr Iles to verify the details.

- 12 In response, Miss West accepted that there had been a delay in the response to Mr Iles' request. An offer had been made to provide the details over the phone, but this had not been taken up. She submitted that the evidence was admissible, and provided a copy of a Valuation Tribunal council tax decision in which a similar matter was raised. In *Various Taxpayers v Virk (Valuation Officer)* [2020], the President allowed the evidence on the basis that the extract came from a well-established reputable organisation.
- 13 Following a brief adjournment, the panel announced its decision to allow the three pieces of rental evidence. The panel was guided by the President's approach in *Various Taxpayers v Virk*, and also considered that albeit at a late stage, an opportunity had been provided for Mr Iles to view the digital copies. Miss West also confirmed that she could answer any questions that Mr Iles had regarding the rental evidence.
- 14 The panel was also aware that Mr Iles had sought to introduce further evidence in a request dated 14 September 2022 and no objection had been raised by the Valuation Officer.

Issue

- 15 The issue to be determined was the price per m² to be adopted in the valuation.
- 16 In the challenge submission, Mr Iles proposed a price of £263 per m² based upon his analysis of the subject rent (he corrected the analysis to £273.20 per m² in his additional submission). Following further consideration of the available rental evidence, he revised his proposed price to £250 per m².

Evidence and submissions

- 17 The bundle comprised all of the documents exchanged between the parties as part of the challenge process: appellant's challenge submission, initial response to the challenge, challenge further exchange, Valuation Officer's challenge case decision notice, appellant's supporting evidence statement and additional evidence.
- 18 In support of his adopted price of £250 per m², Mr Iles referred to the subject rent and rental evidence derived from comparable properties within the locality. He disputed the relevance of the Valuation Officer's comparables which were located 20-30 miles away from the subject property.
- 19 He asked the panel to determine a revised RV of £20,000 with effect from 1 April 2017.
- 20 On behalf of the Valuation Officer, Miss West provided rental evidence in support of the adopted base rate of £400 per m². She disputed the reliability of the subject rent which had been agreed between connected parties, and

the appellant's reference to retail premises on Clay Lane in the challenge submission.

- 21 In her opinion, the most value significant factors in a pharmacy adjoining doctors' surgeries were the surgery and size of it, local population catchment and size of the pharmacy, not location. There were 9,000 patients at the surgery adjoining the subject property, and further patients attending the other healthcare providers on site.
- 22 In view of the evidence presented, Miss West asked the panel to confirm the RV of £31,500 with effect from 1 April 2017.

Decision and reasons

- 23 In arriving at a decision, the panel is governed by rating legislation laid down by Parliament where Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999, provides that:

2(1) 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.

- 24 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).
- 25 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.
- 26 Both parties had referred to *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141 in their submissions. This was a leading judgment which had set out six propositions to be followed when considering the weighting of evidence. The starting point was the subject rent.

- 27 The subject property was leased for a term of 21.5 years effective from 24 October 2016 for an agreed rent of £21,129.17 per annum. Mr Iles submitted that the analysed rent of £273.20 per m² demonstrated that the adopted price of £400 per m² was excessive. He submitted that pharmacies generate money from patients, and the more they have access to, the higher the rental bid. There were 14 other pharmacies in the locality competing for business which he considered was reflected in the subject rent.
- 28 The Valuation Officer considered that the subject rent was unreliable as the FOR confirmed that the landlord and tenant were connected parties and therefore the rent was not considered to be agreed at “arm’s length.”
- 29 As set out in *Lotus and Delta*, the starting point was the subject rent. Consideration of how the time, subject matter and conditions related to the statutory requirements was required in order to determine how much weight should be attached to the subject rent. In view of the fact that the rent was a year and a half post AVD and agreed between connected parties, the panel considered that it carried little weight.
- 30 The remaining propositions in *Lotus and Delta* required consideration of the rents of similar properties and comparable assessments. In light of all the evidence an opinion could then be formed.
- 31 Mr Iles presented the following properties in support of his adopted price of £250 per m²:

15A Chace Avenue, Coventry, CV3 3AD

A property of 80.48m² valued at £200 per m². The rent of £17,174 effective from December 2014 analysed at £213.39 per m².

Pharmacy, Court Street, Leamington Spa, CV31 2BB

A property of 79.61m² valued at £200 per m². The rent of £14,816.96 effective from January 2016 analysed at £186.12 per m².

Wood End Pharmacy, 67 Deedmore Road, Coventry, CV2 1XA

A property of 80.1m² valued at £200 per m². The rent of £27,000 effective from March 2019 analysed at £350.65 per m².

- 32 While it had been stated that Mr Iles’ comparables were in the same scheme as the appeal property, there was insufficient detail provided in order for the panel to establish why they were more suitable for comparison with the appeal property, other than being closer in location. It was a point highlighted by the Valuation Officer that for this type of property, location was not a significant factor. The most value significant factors were the size of the surgery, local population catchment and the size of the pharmacy.

- 33 In order to demonstrate that the adopted price of £400 per m² was not unreasonable, Miss West referred to the following properties:

Avon Pharmacy, Stratford Healthcare, Arden Street, Stratford-upon-Avon, Warwickshire CV37 6HJ

A property of 66.2m² valued at £400 per m². The pharmacy adjoins a larger health complex offering a variety of healthcare services. A rent review effective from 1 May 2013 at a rent of £34,019 analysed at £513.80 per m². The Valuation Officer was of the opinion that the rent agreed reflected a premium for being attached to a large healthcare centre.

Cooperative Pharmacy at Rugby Health & Wellbeing Centre, Drover Close, Rugby, Warwickshire CV21 3HX

A property of 101.5m² valued at £400 per m². A new letting was agreed in March 2014 at a rent of £34,981 on FRI terms. From available transaction details, it was understood that a premium of £300,000 was paid by the tenant to the landlord. The Valuation Officer's analysis of £520.12 per m² reflected that premium. This pharmacy was situated within a larger complex than the subject property.

Lloyds Pharmacy Adj The Surgery, 162 Long Street, Dordon, Tamworth, Staffordshire B78 1QA

A property of 72.2m² valued at £400 per m² subject to a new letting effective from 28 March 2014 at a rent of £28,000 on FRI terms. The rent analysed at £404.62 per m². The adjoining surgery has approximately 13,000 patients.

Lloyds Pharmacy, Balsall Common Health Centre, Ashley Drive, Balsall Common, Coventry CV7 7RW

A property of 141.9m² valued at £350 per m². A rent review effective from 17 April 2015 at a rent of £50,791 analysed at £357.94 per m². Subject to a smaller catchment with 4,000 patients.

Pharmacy at The Medical Centre, Fields Park Drive, Alcester, Warwickshire B49 6QR

A property of 117.06m² valued at £400 per m² subject to a new letting effective from 1 April 2013 at a rent of £30,000. The analysis of £447.81 per m² reflected a premium of £325,000 paid by the tenant. The assessment had been challenged and subsequently withdrawn.

- 34 In consideration of the available evidence, the panel decided to attach most weight to the Valuation Officer's comparable properties. The panel was satisfied that the Valuation Officer's evidence of similar properties, drawn from the same valuation scheme, demonstrated that a base price of £400 per m² was not unreasonable. The panel was not persuaded that the appellant's

representative had demonstrated that the appeal property should be valued at a revised price of £250 per m².

- 35 The panel confirmed the RV of the appeal property at £31,500 with effect from 1 April 2017 and dismissed the appeal.

Date: 20 February 2023

Appeal number: CHG100564215

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.