VALUATION TRIBUNAL FOR ENGLAND

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

RE: Loungearound 33 Station Road, New Milton, Hampshire BH25 6HR

APPEAL NUMBER: CHG100581618

BETWEEN:	S & P Furnishers	Appellant
	And	
	Mr D Virk (Valuation Officer)	Respondent

PANEL: Mrs MJ Cole (Presiding Senior Member)
Mr AN Backway (Senior Member)

CLERK: Miss F Willson

REMOTE HEARING ON: 5 September 2022

APPEARANCES: Mr M Bates from FCS Nationwide Ltd (on behalf of the appellant)
Mr J Short (on behalf of the Valuation Officer).

Summary of decision

1. Appeal allowed in part. The current entry in the Rating List is to be reduced to £13,900 rateable value (RV) with effect from 1 April 2017.

Introduction

2. The appeal arises from a challenge made by the appellant's representative on 2 February 2021, in respect of Loungearound 33 Station Road, New Milton, Hampshire BH25 6HR (the subject property). The challenge was in respect of the entry in the rating list at £14,500 RV effective from 1 April 2017. The appellant sought a revised assessment of £12,000 RV with effect from 1 April 2017. 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 12 January 2022. The appellant's representative made an appeal to this Tribunal which was received on 24 March 2022.

3. The subject property is a lock up shop on Station Road, New Milton in Hampshire and faces the railway station. It comprises of retail space and storage on the ground floor and storage on the first floor. The subject property is 323.2m^2. The appellant holds the property on a long lease which was a new let and commenced in January 2015 at a rent of £12,000 per annum.

4. 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.

5. Mr Bates 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 Bates' declaration of truth included a statement that he was not instructed under any conditional fee arrangement. Mr Bates 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.

Issue

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

Evidence and submissions

7. Mr Bates 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.

8. With reference to his comparable properties and the rent on the subject property he asked the panel to confirm a RV of £12,000 from 1 April 2017.
9. Mr Short referred the panel to the challenge application and decision notice.

10. In consideration of his comparable properties Mr Short asked the panel to confirm the RV of £14,500 with effect from 1 April 2017.

Decision and reasons

11. 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.

12. 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.

13. Mr Bates submitted that when valuing the subject property, the best evidence was the lease on it dated 1 January 2015, which was only three months prior to the AVD. This was a new lease on the open market and so provided the starting point as found in the case of *Lotus and Delta*. Mr Bates explained that the comparable properties supplied by Mr Short were not as reliable as they were as a result of rent reviews or were long standing rents with no agreements in place. He confirmed that the rental evidence should not be taken in isolation but should be given the greatest weight.

14. The panel was aware that in the case of *Lotus and Delta,* which was binding on this Tribunal, the rent on the subject property was the best evidence to rely on. This was dependent on how close to the AVD it was set and if it was in respect of a new letting. The panel put weight on this evidence.

15. Mr Bates explained that the subject property was on the road heading away from the centre of New Milton and so prices would be falling the further away from town a property was. The Valuation Officer had placed the break just after the subject property where there was a railway bridge. Mr Bates, however, submitted that any break should not be reliant on a physical break such as a bridge but based on rental evidence. He argued that the break should be at the subject property. The rent on the subject property devalued to £122/m^2 and so he submitted that for the subject property onwards the zone A price should be £125/m^2 or a combination of zone A price and a size allowance.

16. The panel noted Mr Bates' argument that the break should be related to the subject property but found that the break at the railway bridge was more persuasive.

17. Mr Bates' comparable properties were:

- 23 Station Road which had a zone A price of £125/m^2
- 47 Station Road which had a 10% allowance for size as it was 322m^2.

Address	Size (m^2)	Size ITMS	Effective date of rent	Rent	Analysed rent	RV	Remarks
6 Station Road	96.95	52.39	1 July 2014	£8,300	£158.43	£8,600	Lease renewal for 10 years on FRI with rent review at 5 years
6 Station Road	96.65	52.39	1 July 2014	£8,300	£150.51	£8,600	As above but on IRI terms
*33 Station Road	323.20	97.91	20 Aug 2015	£12,000	£122.56	£14,500	Subject property on FRI terms no rent reviews
35 Station Road	53.40	47.40	1 Jan 2014	£8,250	£165.34	£7,100	An open ended agreement from 2010 with an annual rent review and on IRI terms
41 Station Road	103.68	38.10	28 Aug 2014	£10,000	£107.22	£5,900	Rent review on lease with IRI terms. Rent adjusted for ancillary 2 bedroom flat

45 Station Road	100.75	49.45	1 Jun 2015	£20,000	£274.72	£7,900	This rent review had a nil increase and the rent had to be adjusted for living accommodation

*subject property

Number 23 Station Road was in his opinion a good comparable and supported the zone A price for the subject property at £125/m^2. Number 47 Station Road was very similar in size to the subject property and had a 10% allowance for size which had not been given to the subject property. He submitted that these comparable properties along with the rental evidence on the subject property provided the basket of evidence which supported a zone A price on the subject property of £125/m^2.

18. The panel noted the fact that number 23 Station Road was on the other side of the road and after a break in the retail frontage and so put little weight on this evidence. Number 47 Station Road was very similar in size to the subject property and had an allowance for size of 10%. The panel put weight on this evidence.

19. Mr Short drew the panel's attention to comparable properties which were in the immediate vicinity to the subject property and supported an ITZA price of £150/m^2 for the subject property:

20. Mr Short submitted that in the case of *Lotus and Delta* any rental evidence on the subject property was only the starting point and not the deciding factor. He submitted that it could not be used in isolation and a basket of evidence was required to ensure the correct RV. All of these comparable properties were the nearest geographically to the subject property and they supported a zone A price of £150/m^2 for the subject property. He argued that number 47 Station Road did not have an allowance for size the allowance was in fact for a non-traditional frontage.

21. On balance, the panel was more persuaded by the evidence provided by the Valuation Officer and accepted the zone A price of £150/m^2. However, the panel noted that all of the Valuation Officer's comparable properties were significantly smaller than the subject property ITMS. The panel was therefore convinced that the subject property would require an allowance for size in its assessment and that 10% was not supported by the evidence and so determined that an allowance of 5% was more appropriate.

22. The panel found that the RV for the subject property:

Floor	**Description**	**Area m^2/unit**	**Price per m^2/unit**	**Value (£)**
Ground	Retail Zone A	68.00	£150	10,200
Ground	Retail Zone B	14.40	£75.00	1,080
Ground	Retail Area	37.50	£18.75	703
Ground	Retail Area	53.30	£18.75	999

Ground	Retail Area	39.60	£18.75	743
Ground	Office	8.30	£15	125
Ground	Internal Storage	53.00	£53.00	795
First	Internal Storage No Access	N/A	£0.00	0
Ground	Kitchen	2.60	£15.00	42
Valuation sub-total				**£14,687**
	Allowance at 5%		**734.35**	
Total				**£13,952.65**
Say				**£13,900**

23. The appeal is therefore allowed in part.

Order

24. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry to £13,900 with effect from 1 April 2017 within two weeks of the date of this order. The ratepayer is also entitled to a refund in full of the appeal fee paid in accordance with regulation 13E (1)(a) of the Non Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009.

Date: 16 September 2022

Appeal number: CHG100581618