THE VALUATION TRIBUNAL FOR ENGLAND

*Non-domestic rating appeal; 2017 rating list; accuracy of the rateable value in the list as at 1 April 2017; effective date; shop and premises; rental evidence; comparable assessments; appeal dismissed.*

RE: Regis at J Sainsbury, Bridge Way, Cobham KT11 1HW

APPEAL NUMBER: CHG100592867

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| BETWEEN: | Mr D Novoselov | Appellant |
| | and | |
| | Ms D Bunyan<br>(Valuation Officer) | Respondent |

PANEL: Miss E Antrobus (Senior Member)
Mr M Nwosu

CLERK: Mrs H Beresford

REMOTE HEARING ON: 21 October 2021

APPEARANCES: Mr D Novoselov (Appellant)
Mr R Das (for the Valuation Officer)

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**Summary of decision**

1. The appeal was dismissed, the assessment was confirmed at rateable value (RV) £20,000 with effect from 1 April 2017.

**Introduction**

2. This appeal has been brought in respect of the following: Regis at J Sainsbury, Bridge Way, Cobham KT11 1HW (the ‘appeal property’), which was entered in the 2017 rating list as ‘shop and premises’ at RV £20,000, effective from 1 April 2017.

3. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, Mr Novoselov made an appeal to the Valuation Tribunal for England (VTE). The appeal was made because the Valuation Officer decided not to alter the 2017 rating list following the appellant's check and challenge. The appellant had sought a reduction to RV £12,040.71 with effect from 1 April 2017.

4. The appeal to the VTE was made on the grounds that the valuation for the appeal property was not reasonable, as the Valuation Officer had not made any alteration to the rating list in his challenge decision notice.

5. The appeal property comprises a shop and premises. The property is located within Sainsbury's supermarket in Cobham. The hereditament is located in the retail area on the ground floor near to the main entrance. Historically, the appeal property had formed part of the Sainsbury's store, however, the property had been split with an effective date of 1 April 2017.

6. The President of the VTE is required to make sure arrangements are in place and make such statements and Directions so as to ensure that business before the Tribunal is conducted in accordance with The Local Government Finance Act 1988, Schedule 11, Part 1, paragraph A17(1) and The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and by virtue of Part 2 regulation (5) (arrangement for appeals) and regulation (6)(3)(g) (appeal management powers) the VTE may determine the form of any hearing.

7. Therefore, in pursuance of Regulation (6)(3)(g) the VTE has incorporated "remote hearings" as part of that definition and for the time being as the default option until it is safe to return to normal working. The Tribunal's Consolidated Practice Statement has been amended to reflect this.

8. 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 when 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

**Issues**

9. The base level of value adopted for the appeal property was not agreed. The Valuation Officer has adopted £266.75/$m^2$ in respect of the appeal property, but the appellant sought a reduction to £160.50/$m^2$. The parties had agreed that the property measured 75.02$m^2$. The effective date of the alteration to the list was not agreed. The VO had adopted an effective date of 1 April 2017, but the appellant believed the effective date should be 21 January 2020.

**Evidence and submissions**

10. Mr Novoselov, the appellant, had provided a bundle of evidence submitted by the parties which included: a challenge form and other appeal documentation; a number of the comparable properties; the current 2017 assessment; correspondence between the parties; and a revised valuation in respect of the appeal property.

11. Mr Novoselov contended that the rating assessment of £266.75/$m^2$ on the subject property is excessive compared to comparable properties which he had referred to in his evidence. Mr

Novoselov also argued that the effective date was incorrect and that the new assessment splitting the subject property from the main Sainsbury's shop should be effective from 21 January 2020 when the alteration to the list was made. He contended that prior to this date he had paid business rates as part of his rent.

12. Mr Novoselov asked the panel to confirm an RV of £160.50/$m^2$ for the appeal property which he had calculated by taking the average price per metre square of his comparable properties. Mr Novoselov asked the panel to confirm an RV of £12,040.71 with effect from 21 January 2020.

13. Mr Das argued that the Valuation Officer had been provided with the full details of the lease of the subject property which he stated had been agreed close to the antecedent valuation date (AVD), in October 2015, at £20,000 per annum and was therefore correctly reflected in the RV of £20,000. He believed that in cases of this nature an actual rent agreed close to the AVD was strong evidence upon which to base the rateable value. He also argued that service charges were in addition to the £20,000 rent used as a basis for the valuation of the property.

14. Mr Das argued that Mr Novoselov had not compared like with like when referring to comparable properties. He also contended that the date of the split of the appeal property from the main Sainsbury's store had been agreed by J Sainsbury and the Valuation Officer to be a date prior to the commencement of the 2017 rating list and consequently the effective date of the split had to be 1 April 2017. Given all of the above, Mr Das asked the panel to confirm an RV for the appeal property of £20,000 with effect from 1 April 2017.

**Decision and reasons**

15. The panel had to determine the rateable value for the appeal property, which represented a rent that a hypothetical landlord and tenant would agree, as at the AVD,1 April 2015. The common date was used to ensure that every property was treated in a consistent way.

16. The term 'rateable value' is defined in 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 –
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> 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;
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> 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"

17. The Lands Tribunal judgment in *Lotus and Delta* v *Culverwell (VO) and Leicester City Council* [1976] RA 141 which had been referred to by both parties 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.

18. The panel noted that Mr Das had stated that there was rental evidence for the subject property, and it was aware that that an agreement of £20,000 per annum had been reached in October 2015 a copy of the lease had been provided in evidence. The panel attached significant weight to this evidence.

19. Mr Novoselov had argued that the rent had been inclusive of business rates however the panel noted page five paragraph 3.3 (a) of the lease stated, *'to pay all commercial rates which now are or during the term shall be separately assessed, charged or imposed upon the premises (as opposed to being assessed with the remainder of the store)'*.

20. The panel also noted that whilst the passing rent forms a good starting point for determining the RV of a property other evidence should also be taken into consideration. The panel turned to the evidence of comparable properties cited by Mr Novoselov which had been rebutted by Mr Das. Mr Novoselov had provided details of seven comparable properties which he believed supported his revised valuation of £160.50/$m^2$.

21. Unfortunately for the appellant the panel could only attach moderate weight to this evidence for the following reasons: the Argos store which had also formed part of Sainsbury's store was twice the size of the subject property at 150$m^2$ and was situated in a far less prominent position at the rear of the store; The Dentist at Sainsbury's, Tesco Mobile and Explore Learning at Sainsbury's, were all situated in different postcode areas and were situated on the first floor which the panel found would reduce their value considerably; and Argos at Sainsbury's in Woking, Habitat at Sainsbury's in Woking and Starbuck's in Sainsbury's in Walton-on-Thames were situated in different postcode areas and were again larger than the subject property at 139.78$m^2$, 160.66$m^2$ and 131$m^2$ respectively, as compared to 75.02$m^2$ for the subject property. The panel were aware that the larger a property is, the lower the price per metre square.

22. With respect to the effective date, regulation 14 of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 provides that the effective date of an alteration to a list will generally be the day on which the circumstances giving rise to the alteration first occurred, in this case the split of the subject property from the Sainsbury's store. In this case the split had occurred before the 2017 rating list commenced on 1 April 2017, therefore the alteration had to take effect from the start of the list.

23. The panel found that in cases of this nature the burden of proof is on the appellant to satisfy the Tribunal that the appeal should be allowed. In this case the panel was not persuaded by the evidence and arguments put forward by the appellant's representative that a reduction in the assessment to £160.50/$m^2$ was warranted. Therefore, the appeal was dismissed.

**Date:** 9 November 2021

**Appeal number:** CHG100592867