THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; challenge against compiled list entry; shop and premises; accuracy of rateable value; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal dismissed.

RE: 26/28 Town Square, Basildon SS14 1DT

APPEAL NUMBER: CHG100604819

BETWEEN:	Equalcrest Ltd	Appellant
	and	
	Ms D Bunyan (Valuation Officer)	Respondent

PANEL: Mrs F Rahman-Cook (Presiding Senior Member)
Mrs AE Fielder (Senior Member)

CLERK: Miss F Willson

REMOTE HEARING ON: 13 January 2023

APPEARANCES: Mr C Strong from Altus Group (advocate and expert witness for the appellant)
Mr L Stevens (on behalf of the Valuation Officer).

Summary of decision

1. Appeal dismissed. The panel confirmed the rateable value (RV) of 26/28 Town Square, Basildon SS14 1DT (subject property) at £37,750 with effect from 1 April 2017.

Introduction

2. This was a 2017 rating list appeal in respect of the subject property which arises from a challenge made by the appellant's representative on 10 February 2020. The challenge was in respect of the entry in the rating list at £37,750 RV as 'shop and premises' effective from 1 April 2017. The appellant sought a revised assessment of £17,000 RV. After considering the merits of the challenge, the Valuation Officer (VO) determined that it was not well founded and a decision notice to this effect was issued on 9 May 2022. The appellant made an appeal to this Tribunal against the decision notice which was received on 22 June 2022, on the grounds that the RV of £37,750 was not reasonable and proposed an RV of £30,000 based on a tone of £400/m^2.

3. Mr Strong appeared on behalf of the appellant as 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 Strong stated that he was instructed under a conditional fee arrangement. 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 his client's case.

4. 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.

5. The subject premises comprises a shop which is located on the ground floor of a fourth floor property with the other floors being used as storage. It is located within the town square of Basildon close to the Westgate Shopping Park in a prime retail area.

6. This Tribunal decision document is not and does not purport to be a verbatim record of 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.

Issue

7. The issue between the parties is the RV of the subject property specifically the zone A rate.

Evidence and Submissions

8. Mr Strong submitted a bundle of evidence which included photographs and details of the subject property and comparable properties, his revised RV calculation, copies of correspondence between the parties and his submissions.

9. He submitted that the appeal should be allowed and the RV on the subject property should be reduced to £30,000.

10. Mr Stevens, the representative for the respondent referred the panel to the challenge application and decision.

11. In consideration of the comparable properties admitted in evidence, Mr Stevens asked the tribunal to confirm the RV of £37,750 with effect from 1 April 2017.

Decision and Reasons

12. The appeal 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 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 of paragraph 2(7) to the Act, in relation to both the physical nature of the property and its mode or category of use.

13. The panel had regard to the Lands Tribunal judgment of *Lotus and Delta v Culverwell (VO) & Leicester City Council* [1976] RA 141, as referred to by both parties. This case had established six propositions, which gave authoritative guidance on the weight to be attached to rental and assessment evidence, namely:

(1) 'Where the hereditament which is the subject of consideration is actually let that rent should be taken as the starting point.

(2) 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 s.19(6) of the General Rate Act 1967 the more weight should be attached to it.

(3) 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.

(4) 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 VO. In subsequent proceedings on that list therefore they can properly be referred to as giving an indication of that opinion.

(5) In light of all the evidence an opinion can then be formed of the value of the appeal hereditament, the weight to be attributed to the differing types of evidence depending on the one hand on the nature of the actual rent and on the other hand, on the degree of comparability found in other properties.

(6) In those cases where there are no rents available of comparable properties a review of other assessments may be helpful but, in such circumstances, it would be clearly more difficult to reject the evidence of the actual rent.'

14. Mr Strong submitted that the zone A rate applied to the RV by the VO of £500/m^2 was unreasonable in his opinion. He explained that his proposed zone A rate of £400/m^2 was supported by the rental evidence of the comparable properties he had included as evidence. The subject property was subject to a tenancy agreement which had been renewed on 7 March 2017 for a term of 10 years for a rent of £32,500 per annum, with a six month rent

free period giving a net rent of £30,875 per annum. This equates to £427/m^2 which did not in his view support an ITZA of £500/m^2. He drew the panel's attention to the fact that the rent was a lease renewal and occurred almost two years after the AVD and so in his opinion was the starting point. It was not the end point as outlined in the case of *Lotus and Delta* as it did not fit with the rating hypothesis and so should only be given low to medium weight.

15. He explained that some of the properties on the town square were in a more desirable location than others. Of the six rental agreements provided by the VO he argued that there were only two relevant to the subject property. Those two were number 7 Town Square and Number 4-6 Town Square. In particular Number 7 had a lease which was agreed on the open market on 8 July 2014 and therefore was close to the AVD. It had a rental of £50,000 per annum on FRI terms which analysed to £304.95/m^2. This lease fitted well with the rating hypothesis and supported a tone of £400/m^2 on the subject property giving an RV of £30,000.

16. The panel was aware that in the case of *Lotus and Delta* the rent on the subject property was only the starting point when collecting the basket of evidence to set the RV on the subject property. The panel also noted the disparity between the lease of the subject property and the rating hypothesis.

17. Mr Strong referred the panel to the properties 70/72/74 and 26 Town Square where the tone had been reduced from £900/m^2 to £750/m^2 being a reduction of 17%. He submitted that the hypothetical tenant looking at the subject property would have expected a similar reduction of 17% off the tone adopted for the subject property. This would suggest a tone of £416/m^2 which would be analysed to £400/m^2 giving an RV of £30,000 on the subject property.

18. Mr Stevens put forward the following comparable properties:

Address	RV	ITMS	Effective date	Rent	UAR (m^2)	VOA analysed rent (m^2)
*26/28 Town Square	£37,750	75.6	1/3/17	£32,500	£500	£408.40
78/80 Town Square	£123,000	134.5	4/2/14	£80,000	£900	£594.80
23 Town Square	£95,000	166.55	24/6/14	£150,000	£550	£900.63
33 Town Square	£88,000	152.96	18/9/16	£152,325	£550	£995.85
21 Town Square	£72,000	127.39	21/5/18	£98,500	£550	£773.22
54/56 Town Square	£60,000	65.65	24/2/16	£40,000	£900	£587.97

*subject property

19. He submitted that the rental evidence on the subject property should carry little weight as it was almost two years post AVD. He did however draw the panel's attention to the rental evidence of his comparables above. The subject property has Wilko's to the left and Greggs to the right with Lloyds Bank next door. These businesses would draw footfall to the subject property. The rents show a pattern in relation to the price per square metre with the three hereditaments to the right of the subject property on the same side of the street valued at

originally £900/m^2 but now lowered to £750/m^2. The agreed reductions were as a result of the vacant units in the direct vicinity of these properties and the need for redevelopment of the area. The four properties opposite the subject property were valued at £550/m^2 and the subject property and the bank next door at £500/m^2.

20. Mr Stevens argued that the comparable property which carries most weight in supporting the subject property's RV is 78/80 Town Square which was a new letting on 4 February 2014 on a five year lease with no rent reviews and on FRI terms. The rent is open market and is £80,000 which analyses to £594.80/m^2 with an RV of £125,000 and a UAR of £750/m^2. The subject property has an analysed rent of £408.40 and a UAR of £500/m^2

21. The panel was aware that in the case of *Lotus and Delta* the basket of evidence used in the valuing of a property included that of the rent on comparable properties in the vicinity of the subject property. The panel could therefore put weight on this evidence.

22. From the basket of evidence provided by the VO the panel was satisfied that the current assessment of the subject property at a RV of £37,750 was reasonable and the appellant had not provided any evidence to persuade the panel that it was excessive. The appeal is therefore dismissed.

Date: 27 January 2023

Appeal number: CHG100604819

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.