**VALUATION TRIBUNAL FOR ENGLAND**

*2017 Rating List appeal: shop and premises; Lotus & Delta Ltd v Culverwell (LO) and Leicester City Council [1976]; rental evidence; assessments of comparable properties; Zone A rate in dispute; appeal allowed in part.*

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|---|---|---|
| APPEAL NUMBER: | CHG100651818 | |
| RE: | Savers,6 Leigh Arcade, Wigan WN1 1AJ<br>(the "subject property") | |
| BETWEEN: | Savers Health and Beauty Limited | Appellant |
| | and<br>Amanda Hitching BA(Hons) MRICS<br>(Valuation Officer) | Respondent |
| SITTING: | *remotely using Microsoft Teams* | |
| ON: | Wednesday 22 May 2024 | |
| BEFORE: | Mrs L Bryning, Presiding Senior Member<br>Mrs V Hollender, Member | |
| CLERK: | Mr R Patel IRRV(Hons) | |
| APPEARANCES: | Mr L Bourke of Gerald Eve LLP, on behalf of the appellant as advocate and expert witness<br>Ms R Fahy, on behalf of the respondent as advocate and expert witness | |

**DECISION AND STATEMENT OF REASONS**

## Decision

1. The appeal is allowed-in-part.

2. The panel found that the current zone A rate of £255/m$^2$ was excessive and determined that a zone A £100/m$^2$ was fair and reasonable, which resulted in a reduced assessment of £19,750 Rateable Value (RV) with effect from 1 April 2017,

**Introduction**

3. This was a 2017 Rating List appeal. The subject property had been entered into the 2017 list as “shop and premises” at a RV of £96,500, with effect from 1 April 2017.

4. The challenge proposal submitted by Gerald Eve LLP on behalf of the appellant was received by the Valuation Officer on 11 March 2021 6 November 2020. It had been made on the grounds that the £96,500 RV shown in the rating list on 1 April 2017 was excessive, with a reduced RV of £14,750 sought.

5. The Valuation Officer issued a challenge case decision notice on 29 May 2022, which stated that based upon the evidence and information available, the rating list entry was reasonable and the RV would remain at £96,500. However, prior to this, discussion had taken place between the parties, such that the Valuation Officer changed her initial response which incorporated a reduction in the zone A rate from £550/$m^2$ to £255/$m^2$, which resulted in a revised RV of £46,250 effective from 1 April 2017.

6. The appellant remained dissatisfied with the RV of £46,250, and as the respondent did not consider it warranted any further reduction, an appeal was received by the Tribunal on 26 September 2022 with the appellant’s representative proposing an assessment for the subject property of £14,750 RV, effective from 1 April 2017. The appeal was in accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, made on the grounds that the valuation for the hereditament is not reasonable.

7. As Mr Bourke was appearing as advocate and expert witness the clerk asked if there was a success related fee involved and if so whether its existence was compatible with his obligations to the tribunal as an expert. This question was raised in view of the Upper Tribunal’s judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC). Mr Bourke declared that he was instructed on a standard fee basis, and he was not instructed under any conditional or other success-based fee arrangement. He stated 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.

8. This statement of reasons is not and does not purport to be a full verbatim record of the proceedings.

<u>*Background*</u>

9. The subject property was a shop and premises situated on Leigh Arcade in The Galleries shopping centre in Wigan.

10. Ownership of The Galleries Centre had changed several times since its opening in 1991. Mr Bourke had stated that due to years of stagnation and decline, it was brought back under ownership of the local billing authority in March 2018. He added that key retailers, who had previously occupied properties in The Galleries had vacated to move into the nearby new Grand Arcade shopping centre, which opened in 2007. The panel was aware that there were plans for re-development of The Galleries over several years, which did not transpire. The Galleries was demolished in July 2022, such that the entry for the subject property was deleted from the 2017 Rating List effective from 22 July 2022.

11. As at 1 April 2017 the hereditament consisted of ground floor retail space and storage space at basement level, amounting to a total area of the property of 606.6m$^2$.

12. When assessed at an RV of £96,500 a zone A rate of £550/m$^2$ had been applied. At the RV of £46,250, the zone A rate had been reduced to £255.00/m$^2$. It had been argued by the appellant's representative that the reduced zone A rate of £255/m$^2$ was still excessive and after having regard to the rent passing on the subject property, he sought a reduction to £70.25/m$^2$, which resulted in his proposed assessment of £14,750 RV with effect from 1 April 2017.

13. The Valuation Officer defended the present assessment of £46,250 RV with effect from 1 April 2017, assessed at a zone A rate of £255/m2, based on the rental evidence.

**Relevant Law**

14. The term 'rateable value' is defined in paragraph 2(1) of 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 Th 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".

15. This is a compiled list appeal and therefore the material date is 1 April 2017.

**Discussion**

16. 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. This common date was used to ensure that every property was treated in a consistent way.

17. The panel was aware that the Lands Tribunal judgment in *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141 provided authoritative guidance on the weight to be attached to rental and assessment evidence. This case had established six propositions that gave clear guidance to be followed when assessing rateable value. Bearing these six propositions in mind, the panel acknowledged that the rent on the subject property, where available, was considered to be the correct starting point and consideration to how that rent compared to the statutory definition of rateable value.

18. Mr Bourke was of the opinion that the rent passing on the subject property was the best available evidence. There was rent passing of £12,000 per annum (pa), which was a lease renewal from 23 March 2015, for a term of 3 years. There was a further lease renewal on 23 March 20218, when the rent remained at £12,000 pa. Mr Bourke had devalued the rent to £70.26/m$^2$ He had sought a reduced zone A rate of £70.25/m$^2$, in line with the passing rent, He argued that, having regard to the authoritative guidance in *Lotus & Delta*, the rental evidence of the subject property was the best evidence and that this strongly supported his assertion that the current assessment was excessive.

19. Ms Fahy was of the opinion that it was useful to look at the basket of evidence and have regard to the surrounding rents of comparable properties, in addition to that of the subject property. She explained that there were nil rents, low rents and high rents. She pointed out that the current zone A rate of £255/m$^2$ fell in line with the rents passing on 5 Leigh Arcade and 2 Tyldesley Arcade, which demonstrated some level of consistency.

20. The panel was aware from *Lotus v Delta* that when determining rateable value the subject rent was the starting point. However, in accordance with the third proposition in *Lotus and Delta,* where rents of similar properties were available they too were 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.

21. In terms of rental evidence of comparable properties, Mr Bourke and Ms Fahy referred to the following:

*Respondent's Rental Evidence*

| Address | Area (m$^2$) | Rent | Effective Date | Adjusted Rent | ITZA (m$^2$) |
|---|---|---|---|---|---|
| 5 Leigh Arcade | 324 | £32,760 | 01/02/17 | £32,760 | £258.60 |
| 5 Leigh Arcade | 324 | £36,000 | 09/11/18 | £30,000 | £236.82 |
| 13 Leigh Arcade | 124 | £4,000 | 23/03/16 | £4,000 | £52.46 |
| 1 Tyldesley Arcade | 145 | £35,000 | 01/09/16 | £30,992 | £428.66 |
| 2 Tyldesley Arcade | 130 | £15,000 | 01/03/18 | £14,475 | £257.90 |
| 33 Market Square | 379 | £0.00 | 01/09/14 | £0.00 | £0.00 |
| 33 Market Square | 379 | £0.00 | 01/05/17 | £0.00 | £0.00 |
| 35 Market Square | 30 | £160,000 | 20/11/14 | £160,000 | £618.16 |
| 37 Market Square | 668 | £57,000 | 11/04/18 | £57,000 | £350.63 |
| 11 Woodcock Square | 175 | £58,000 | 01/11/14 | £53,070 | £593.69 |
| 4 Atherton Square | 75 | £4,800 | 24/06/15 | £4,800 | £80.33 |
| 11 Hope Street | 378 | £25,001 | 01/07/15 | £15,529 | £104.51 |
| 2 Standish Gallery | 121 | £30,000 | 01/02/16 | £30,000 | £484.81 |
| 1 Billinge Arcade | 282 | £60,000 | 13/05/16 | £56,516 | £562.24 |

*Appellant's Rental Evidence*

| Address | Area ($m^2$) | Rent | Effective Date | Adjusted Rent | ITZA ($m^2$) |
|---|---|---|---|---|---|
| 4 Atherton Square | 75 | £4,800 | 24/06/15 | £4,800 | £80.33 |
| 11 Hope Street | 378 | £25,001 | 01/07/15 | £30,000 | £104.51 |
| 13 Leigh Arcade | 124 | £4,000 | 23/03/16 | £4,000 | £52.46 |

22. In considering the above rental evidence, the panel was mindful that at the AVD the subject property was situated in a shopping development that was failing, with tenants leaving, void units and the consequential decline in trade and football. The panel was not convinced by Ms Fahy's description of the situation as being a 'temporary blight' accepting Mr Bourke's statement that the centre was in 'terminal decline'. The panel had not been presented with any evidence to suggest that the passing rent on the subject property was a peppercorn rent. The panel considered the subject property's rent of £12,000 to be a fair and reasonable indication of the open market rent, given these circumstances. The passing rent had been set just one week prior to the AVD and analysed to £70.26/$m^2$. The panel placed great weight on this evidence.

23. However, before arriving at its decision, in line with the propositions set out in *Lotus and Delta*, the panel went on to address the rents set on comparable properties presented by both parties. The panel was not persuaded by Ms Fahy's preferred rents on 5 Leigh Arcade and 2 Tyldesley Arcade. The rents set on these properties were too removed from the AVD to be of great significance having been set in 2017 and 2018. The panel also considered Tyldesley Arcade, together with Standish Gardens superior areas in more upmarket locations than the subject property. Additionally, the panel placed less weight on 35 Market Street, which was occupied by the NHS together with 8 Leigh Arcade and 6 The Gallery.

24. Mention was also made at the hearing and within the bundle to a recent settlement at a zone A rate of £225/$m^2$ reached in respect of 9 Leigh Arcade. However, the panel placed less weight on this evidence preferring to place weight on actual rents set on the subject property and comparable properties.

25. The panel was more persuaded by the comparable rental evidence provided by Mr Bourke in relation to 4 Atherton Square, 11 Hope Street and 13 Leigh Arcade, the first two having a lease renewal or new letting within four months of the AVD, with the latter a lease renewal within 12 months of the AVD. The rents on these three properties analysed to £80.33/$m^2$, £104.51/$m^2$, and £52.46/$m^2$.

26. When considering all of the evidence before it, the panel found that the current zone A applied to the subject property's assessment of £225/$m^2$ rate was excessive and unjustified, especially given its location at the AVD, when the panel believed it was clear that the decline of The Gallery shopping centre would lead to decreasing achievable levels of rent. After having regard to the analysed rent on the subject property, together with the three rents provided by Mr Bourke, the panel determined that a zone A rate of £100/$m^2$ more fairly reflected the appeal property and its locality as at the AVD. This resulted in a revised assessment for the subject property to £19,750 RV.

27. Accordingly, the panel allowed the appeal in part, it found the existing assessment to be unreasonable and determined an assessment of £19,750 Rateable Value, with effect from 1 April 2017. The breakdown of the valuation is shown overleaf:

| Savers,6 Leigh Arcade, Wigan WN1 1AJ | | | | |
|---|---|---|---|---|
| | | | | |
| **Floor** | **Description** | **Area m²** | **£/m²** | **Value £** |
| Ground | Retail Zone A | 79.20 | 100 | 7,920 |
| Ground | Retail Zone B | 74.10 | 50 | 3,705 |
| Ground | Retail Zone C | 74.40 | 25 | 1860 |
| Ground | Sales Remainder | 215.80 | 12.5 | 2698 |
| Basement | Stock/Staff | 163.10 | 5.50 | 897 |
| Total area | | 606.60 | | |
| | | Subtotal | | £17,080 |
| | Air conditioning System | 393.50 | 7.00 | 2,755 |
| | | Total Value | | £19,835 |
| | | Adopted Rateable Value | | £19,750 |

**Disposal**

28. In view of the above findings and conclusions, the Tribunal panel found the existing assessment to be unreasonable and determined an assessment of £19,750 RV, with effect from 1 April 2017.

**Order**

29. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry for Savers, 6 Leigh Arcade, Wigan WN1 1AJ to £19,750 RV, with effect from 1 April 2017, within two weeks of the date of this order.

30. The Appellant is also entitled to a full refund of the fee paid in accordance with regulation 13E(1)(a) of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 (as amended).

**Date issued to parties:** 21 June 2024

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**Right of further 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.

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