

THE VALUATION TRIBUNAL FOR ENGLAND



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

RE: 20 West Walk, Yate BS37 4AX

APPEAL NUMBER: CHG100694306

BETWEEN: House of Luxxe Appellant

and

Mr D Virk Respondent
(Valuation Officer)

PANEL: Mr A Backway, Presiding Senior Member
Mrs A Fielder, Senior Member

CLERK: Ms R Muller

REMOTE HEARING ON: Wednesday 26 July 2023

APPEARANCES: Mr D Bullimore from Lambert Smith Hampton, representing the Appellant
Miss Mills, representing the Respondent

Summary of decision

1. The appeal was dismissed. The panel determined that the present zone A price of £550 per m² was reasonable and therefore the Rateable Value (RV) of £37,750 with effect from 1 April 2017 was confirmed.

Introduction

2. This was a 2017 rating list appeal. 20 West Walk, Yate BS37 4AX, (hereafter, known as the 'appeal property') had been entered in the 2017 Rating List as 'shop and premises' at a RV of £46,500 with effect from 1 April 2017.

3. The challenge proposal was submitted by Lambert Smith Hampton on behalf of House of Luxxe and was received by the Valuation Officer (VO) on 18 May 2021. It had been made on the grounds that the RV shown in the Rating List on 1 April 2017 was inaccurate. The VO disagreed with Lambert Smith Hampton's proposed RV of £13,250 with effect from 1 April 2017. However, the VO agreed that the Rating List entry was unreasonable based on the evidence and information available. The RV was therefore reduced to £37,750. The VO issued a challenge case decision notice on 24 September 2021.
4. 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 was not reasonable. The appeal was received by the Tribunal on 24 January 2022.
5. The appeal property was a single storey shop on West Walk. It was in a modern shopping parade with a variety of national and local occupiers. The appeal property operated as a beauty salon.
6. The present valuation of £37,750 RV is based upon a total area of 127.66m², at a zone A price of £550 per m².
7. Mr Bullimore, on behalf of the Appellant, appeared before the panel in a dual capacity as both advocate and expert witness. The statement of truth signed by Mr Bullimore indicated that he was instructed on a conditional fee basis. He did, however, accept that first his duty was to the Tribunal and that he would comply with this duty together with the requirements of his professional body, regardless of whether or not the evidence supported the Appellant's case. Such evidence would be inadmissible in the Upper Tribunal, having regard to the Upper Tribunal's judgment in *Gardiner & Theobald LLP v Jackson (VO)* [2018] UKUT 0253 (LC). However, 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 in England).
8. The panel, therefore, considered the "expert" evidence and attached such weight to it as it saw fit.
9. Miss Mills, on behalf of the VO had stated that she appeared before the panel in a dual capacity as both advocate and expert witness. However, she informed the panel that she had not visited the appeal property and that she had not been involved in the challenge process.
10. This Tribunal decision document is not and does not purport to be a verbatim record of proceedings.

Issues

11. The issue in dispute is the correct zone A price per m² to be adopted in the appeal property's valuation.

Evidence and submissions

12. The bundle comprised all the documents exchanged between the parties as part of the challenge process: initial response to the challenge, Valuation Officer's challenge case decision notice, and Appellant's challenge submission.
13. In support of his proposed zone A price of £195.00 per m², Mr Bullimore referred to comparable rental evidence and requested a revised valuation at £13,250 RV with effect from 1 April 2017.
14. Miss Mills defended the present zone A price of £550 per m² with reference to the basket of rental evidence.

Decision and reasons

15. In arriving at a decision, the panel was 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.
16. 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).
17. 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 was 1 April 2017.
18. The panel was guided by the leading judgment of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141, which had set out six propositions to be followed when considering the weighting of evidence. The subject rent was the starting point, but 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 it.

19. The appeal property was subject to a five year lease effective from 2 December 2020 at a rent of £20,000 per annum (pa) with a six month rent free period. The panel held that the rental details were too far removed from the AVD to be considered as good evidence.
20. 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.
21. Mr Bullimore sought to demonstrate with reference to rental analysis that the zone A price of £550 per m² was excessive. He drew particular attention to the comparable properties of 15 and 16/18 West Walk.
22. 15 West Walk was located in the middle area of West Walk. This property was subject to a new lease effective from 26 May 2015 for a period of two years at a rent of £10,000 pa. Mr Bullimore analysed this rent to be £193 per m² zone A. The panel noted that this comparable property was also let from May 2017 and May 2019 at the same rent of £10,000 pa and was valued at a zone A rate of £625 per m². However, the panel also noted that the Form of Return (FOR) stated: 'Rent negotiated between landlord and tenant based upon affordability/viability – otherwise this store would have closed'. The rent was also determined to be based on turnover. Therefore, the panel placed less weight on the rental details as it could not be considered an open market rental value.
23. 16/18 West Walk was located next door to the appeal property, this was a new lease effective from June 2015, where the Landlord had analysed the rent at £300 per m² zone A. However, the panel noted that there was not any rental figure provided and the VO did not have any record of this data. As no other details with regards to this rent had been provided, the panel again placed less weight on the evidence provided for this comparable property. However, the panel did note that this property had been valued at the same zone A rate as the appeal property. The panel also noted that its RV had been challenged but had not been appealed.
24. Mr Bullimore had provided a list of other comparable properties located on West Walk, with the rental analysis figures and the date of rent but had not provided any rental figures with regards to these comparable properties for the panel to consider. Therefore, this did not assist the panel when making its decision.
25. The panel was referred to the assessment evidence by Mr Bullimore, which provided a list of properties located on West Walk, that had been challenged, but were at different stages. The panel considered 14, 32-34C West Walk where the challenges had been agreed or well founded. The panel noted that 14 West Walk had had its zone Z rate reduced from £725 per m² to £550 per m² when the challenge was well founded. The value was in line with the appeal property's revised zone A rate. The panel noted that 14 West Walk was located close to the appeal property. Therefore, the panel placed more weight on the details of this comparable property.

26. The zone A rate applied to 32-34C West Walk had been reduced from £500 per m² to £300 per m² due to a challenge that had been submitted and agreed. The panel noted that this property was not located on the main West Walk throughfare. It did not have a frontage from West Walk and therefore, the panel held was not in a good position compared to the appeal property. Therefore, the panel held that the appeal property, being in a better location within the shopping centre would attract a higher rental value than 32-34C West Walk.
27. The panel noted that the toilet block which was located towards the middle of the shopping centre seemed to be where the tone divided. The units on the right side from the toilet block had a zone A rate of £625 per m², whereas the units on the left side of the toilet block, towards where the appeal property was located had been valued at a zone A rate of £550 per m².
28. Within the VO's submission, the VO had stated that there had been Retail Surveyors' Association discussions with agents representing the landlord and tenants, of which the following zone A rates had been agreed:
- a. East Walk values between £850 per m² to £900 per m²
 - b. West Walk values between £625 per m² to £900 per m²
 - c. South Walk values between £650 per m² to £900 per m²
 - d. North Walk values between £500 per m² to £900 per m²
29. As the appeal property was located on West Walk, its zone A rate had originally been at the lower end of the range at £675 per m². However, due to the evidence and information available, the VO had agreed that the original zone A rate of £675 per m² was unreasonable and had reduced it to £550 per m².
30. As the panel applied little weight to the rents for the appeal property, the panel turned to the other comparable properties, in particular the tone of the list. The definition of tone was provided by the Court of Appeal in *K Shoe Shops Ltd v Hardy (VO) and Westminster City Council* [1983] 3 All ER 609 HL. In this case, the Court of Appeal held that when seeking to rely on evidence of tone, there were three stages of evolution. Firstly, a new list would carry little persuasive weight that a tone of values existed; little of its basis would have been tested. The second stage would have regard to settlement evidence and decisions of tribunals. Finally, a stage is reached when there are sufficient numbers of settlements, or lack of challenges against assessments to establish a pattern of reliable values. At that moment, the tone can be said to exist, and it could be used as persuasive evidence in its own right.
31. After having regard to rental evidence from comparable properties along West Walk and nearer to the subject property, the panel held that the revised zone A rate of £550 per m² for the subject property was not unreasonable.
32. Therefore, the panel dismissed the appeal.

Date: 7 August 2023

Appeal number: CHG100694306

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.