THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; shop and premises; Zone A price per m^2 in dispute; rental evidence; comparable assessments; appeal allowed in part.

RE: Domino's Pizza, 251 Bradford Road, Keighley, West Yorkshire BD21 4AW

APPEAL NUMBER:	CHG100740933	
BETWEEN:	D P Realty Limited	Appellant
	and	
	Ms A Hitchings, Valuation Officer	Respondent
PANEL:	Mr G Coombes (Senior Member) and Dr P Thomson	
CLERK:	Mrs L Horne	
REMOTE HEARING ON:	Tuesday 31 January 2023	
APPEARANCES:	Ms R Heaton from Colliers International, representing the appellant Ms I McCully representing the Valuation Officer	

Summary of decision

1 Appeal allowed in part. The panel determined a revised rateable value (RV) of £10,750 with effect from 1 April 2017, based upon a Zone A price of £145 per m^2.

Introduction

2 This is a 2017 rating list appeal. Domino's Pizza, 251 Bradford Road, Keighley, West Yorkshire BD21 4AW, (the 'appeal property') had been entered in the 2017 rating list as 'shop and premises' at a RV of £14,750 with effect from 1 April 2017.

3 The challenge proposal was submitted by Colliers International on behalf of D P Realty Limited and was received by the Valuation Officer on 8 June 2021. It had been made on the grounds that the RV shown in the rating list on

1 April 2017 was inaccurate. A revised RV of £8,400 was proposed with effect from 1 April 2017.

4 The Valuation Officer issued a challenge case decision notice on 11 March 2022 which disagreed with the proposed alteration of the list but stated that the rating list entry was unreasonable based on the evidence and information available. The RV was altered to £13,000 based upon a reduction in the Zone A price from £200 to £175 per m^2.

5 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 is not reasonable. The appeal was received by the Tribunal on 7 July 2022.

6 Ms Heaton 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), Ms Heaton's declaration of truth included a statement that she was not instructed under any conditional fee arrangement. She declared that she understood and accepted that her duty was to the Tribunal in giving her evidence and she would comply with this as well as the requirements of her professional body, regardless of whether or not the evidence supported the client's case.

7 The appeal property is a ground floor retail unit of masonry construction built in the 1990s. It has a glass frontage facing Bradford Road with one entrance door and a flat roof. There is an ancillary basement and a shared small car park to the rear. The present valuation of £13,000 RV is based upon a total area of $178.7m^2$, or $74.3 m^2$ in terms of Zone A (ITZA), at a Zone A price of £175 per m^2.

8 This tribunal decision document is not and does not purport to be a verbatim record of proceedings.

Issues

9 The issue in dispute is the Zone A price per m^2 to be adopted in the valuation.

Evidence and submissions

10 The bundle comprised all of the documents exchanged between the parties as part of the challenge process: initial response to the challenge, further evidence exchanges, Valuation Officer's challenge case decision notice, and appellant's challenge submission.

11 In support of her proposed Zone A price of £114 per m^2, Ms Heaton referred to the subject rent and rental evidence derived from comparable properties within the locality. She disputed the reliability of the rental evidence provided by the Valuation Officer.

12 On behalf of the Valuation Officer, Ms McCully cited the rent of a comparable property in support of a Zone A price of £175 per m^2. She disputed the relevance of the appellant's comparable properties which were mostly located one mile away from the subject.

Decision and reasons

13 In arriving at a decision, the panel is 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.

14 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).

15 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 is 1 April 2017.

16 Ms Heaton had referred to *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141 in support of the appellant's case. This was a leading judgment which had set out six propositions to be followed when considering the weighting of evidence. The starting point was the subject rent.

17 The appeal property is subject to a 20 year lease effective from 19 March 2007, with 8 year rent reviews. The March 2015 rent review was settled at a nil increase of £8,500 per annum.

18 Ms Heaton confirmed that the property was sublet to a Domino's Franchisee on 27 May 2020, in which the same passing rent of £8,500 was agreed. As

the effective date of the rent review was in March 2015, she contended that the subject rent should hold the highest weight when setting the tone. The terms of the headlease were analysed to arrive at a figure of £114 per m^2 ITZA.

19 In the challenge decision the Valuation Officer stated that the effective date of the rent, 19 March 2007, was too far removed from the AVD and therefore no weight could be given to it in the determination of an appropriate RV for the subject property. At the hearing, Ms McCully further submitted that this was a connected party rent. In response, Ms Heaton referred to the Memorandum of Rent Review which named the landlord as J L Leach and the tenant as D P Realty Limited, and she questioned why Ms McCully believed that the parties were connected. Ms McCully replied that the FOR records dated back to 2007, and the occupier stated that they were connected to the landlord as a franchisee. Ms Heaton disputed the introduction of the connected party issue at the hearing and was of the firm opinion that the headlease was an arm's length transaction.

20 The panel found no reference to the subject rent being agreed between connected parties in the Regulation 17 Notice and noted that it was not an issue which had been raised previously by the Valuation Officer. While a rent review did not hold as much weight as a new letting, the panel rejected the Valuation Officer's assertion that the subject rent carried no weight.

21 As set out in *Lotus and Delta*, the starting point was the subject rent. 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 the subject rent. 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.

22 The Valuation Officer presented one piece of rental evidence in support of a Zone A price of £175 per m^2 for the appeal property:

37, 39 and 41 Bradford Road, Keighley BD21 4BW

A shop and premises with a total significant area of 235.53m^2. A new lease commenced on 19 October 2014 at a rent of £26,000, which analysed at £206.14 per m^2. The Valuation Officer adopted a Zone A price of £200 per m^2 based on size, location and other physical factors. Although larger than the subject, it was in the same scheme, postcode and located on the same road circa 0.5 miles away.

23 Ms Heaton disputed the Valuation Officer's reliance solely on this rent for a number of reasons. As a café and premises, it was in a different mode and category of occupation to the subject property. Her analysis of the rent at £220 per m^2 appeared to have been ignored by the Valuation Officer when setting the tone at £200 per m^2.

24 It had also been raised as a concern by Ms Heaton that as the rent was much higher than any other in the area it might not be a genuine open market transaction. That concern increased as a result of the split of the property into two separate assessments with effect from 10 January 2019. With reference to multiple dated images there appeared to have been no physical changes and the property still appeared to be a single unit.

25 The panel found it unusual that the Valuation Officer's case relied upon on one rental transaction, as reference was usually made to a basket of evidence. On its own, the panel was not persuaded that the rent of a larger property in a superior location demonstrated that a Zone A price of £175 per m^2 was reasonable for the appeal property.

26 Ms Heaton's contention for a Zone A price of £114 per m^2 was based upon her analysis of the subject rent, and consideration of the following:

247/249 Bradford Road, Keighley, BD21 4BW

The neighbouring unit occupied as a takeaway food retailer subject to an open market letting agreed at a rent of £7,999.92 with effect from 1 March 2017. The rent analysed at £132 per m^2, and although two years post AVD, Ms Heaton submitted that the evidence should hold significant weight in deciphering the tone for this area of Bradford Road. The trading position was called into question given the periods of vacancy and number of occupiers. It was also highlighted that when the property was let, it was known that a small business would benefit from 100% rate relief.

123/125 Devonshire Street, Keighley BD21 2QL

A property of $90.85m^2$ ITZA subject to a new letting at a rent of £9,600 with effect from 1 January 2016. The rent analysed at £105.70 per m^2, and it was assessed at a Zone A price of £110 per m^2. This property had been dismissed by the Valuation Officer on the grounds that it was twice the size of the subject property, however, Ms Heaton highlighted that it was just $16m^2$ larger, compared to the Valuation Officer's comparable which was $43.61m^2$ larger.

The Valuation Officer had also questioned the relevance of 123/125 Devonshire Street as it was 1.4 miles away, however no comment had been made on the quality of the location. Ms Heaton stated that it was close to Keighley centre and had good access to arterial routes. In her opinion the location was similar in quality to that of the subject.

41 Bradford Road, Keighley BD21 4BW

A property of $41.41m^2$ ITZA subject to a new lease with effect from 10 January 2020 at a rent of £6,000. This was part of the former 37, 39 and 41 Bradford Road assessment referred to by the Valuation Officer. The analysis of £144 per m^2 was considered by Ms Heaton to be more in line with the other rents in the area.

27 In further support of her contention that the Zone A price adopted for the appeal property was excessive, Ms Heaton presented comparable assessments from the same scheme as the appeal property:

21/23 Bridge Street, Keighley BD21 1AA

A property of $168.2m^2$ assessed at a Zone A price of £135 per m^2. Ms Heaton considered this to be a better quality unit in a better location, closer to the city centre on a main road.

54 Lawkhome Lane, Keighley BD21 3DX

A property of $137.8m^2$ assessed at a Zone A price of £130 per m^2. Ms Heaton considered this to be a superior location in the centre of Keighley with good access to the A629. The overall quality was also considered to be better than the subject.

57 Worth Way, Keighley BD21 5JP

A property of $202.5m^2$ assessed at a Zone A price of £100 per m^2. Ms Heaton considered this to be a better quality unit in a superior location close to the city centre.

191/195 Oakworth Road, Keighley BD21 1RE

A property of $178.25m^2$ assessed at a Zone A price of £155 per m^2. Ms Heaton considered this to be a better quality but similar size unit in a similar type of location, on the outskirts of the city centre.

28 It was a point made by Ms Heaton that in the challenge decision the Valuation Officer did not address the catchment area, quality or similarity of any of the units listed as comparable assessments, and instead chose only to comment on their distance away from the subject property. She further highlighted a lack of discussion which had meant that there had been no opportunity to identify which comparable was considered to hold the highest weight in deciphering the tone on the subject unit.

29 In her opinion, 57 Worth Way was the most relevant comparable due to the similarity in location and the low quality. It had been assessed at a Zone A price of £100 per m^2. Taking into account that this unit was slightly older, Ms Heaton contended that this supported a Zone A price of £114 per m^2 for the appeal property. She commented that the Valuation Officer's proposed revised Zone A price of £175 per m^2 was not justified and appeared arbitrary.

30 Having rejected the relevance of the Valuation Officer's sole rental comparable, the panel decided to attach most weight to the comparable properties presented by Ms Heaton. The panel was satisfied that the weight of

the evidence demonstrated that the present Zone A price of £175 per m^2 was unreasonable. However, the panel was not persuaded that a Zone A price of £114 per m^2 based upon the analysis of the subject rent was appropriate.

31 As set out in *Lotus and Delta*, the rent was the starting point, but it was necessary to consider the rents of similar properties and comparable assessments. In light of all the evidence an opinion could then be formed.

32 The panel noted that there was no reference to the neighbouring unit, 247/249 Bradford Road in the Valuation Officer's challenge decision. Ms McCully's only reference to the property was that as a rent two years post AVD, it did not hold significant weight. The panel acknowledged that it was two years post AVD, however, in view of its close proximity to the subject, it was significant and should form part of the basket of evidence.

33 In further consideration of the Zone A prices adopted for comparable properties within the same scheme and in similar locations, the panel determined that a revised Zone A price of £145 per m^2 for the appeal property was fair and reasonable.

34 The appeal was therefore allowed in part and a revised RV of £10,750 determined as follows:

Description	Area m^2/unit	£ per m^2/unit	Value
Ground Floor Retail Zone A	49.20	145.00	7,134
Ground Floor Retail Zone B	41.40	72.50	3,002
Basement Internal Storage	88.10	7.25	639
		Valuation sub-total	10,775

Rounded down to £10,750 RV

Order

35 Under the provisions of regulation 38(4) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to alter the entry in the rating list to rateable value £10,750 with effect from 1 April 2017.

36 Under regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

37 A refund of the paid fee will now be arranged provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

Date: 20 February 2023

Appeal number: CHG100699474

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.