THE VALUATION TRIBUNAL FOR ENGLAND

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

RE: 14 Kings Walk, Gloucester GL1 1RW

APPEAL NUMBER: CHG100595772

BETWEEN:	Claires Accessories UK Ltd	Appellant
	and	
	Mr Dal Virk (Valuation Officer)	Respondent

PANEL: Mrs AE Fielder (Senior Member)
Mrs C Parkes (Member)

CLERK: Miss F Willson

REMOTE HEARING ON: 5 May 2023

APPEARANCES: Mr D Bullimore from Lambert Smith Hampton (on behalf of the appellant)
Mr K Sloan (on behalf of the Valuation Officer).

Summary of decision

1. Appeal allowed in part. The rateable value (RV) of 14 Kings Walk, Gloucester GL1 1RW (subject property) is reduced from £48,000 to £43,000 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 June 2021. The challenge was in respect of the entry in the rating list at £48,000 RV as 'shop and premises' effective from 1 April 2017. This was a compiled list entry, the material date for this appeal was therefore 1 April 2017. The appellant sought a revised assessment of £37,250 RV based on a tone of

£682/m^2. 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 29 November 2021. The appellant still contended the RV of £48,000 was not reasonable.

3. Mr Bullimore 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), Mr Bullimore 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 property comprises a retail unit within the Kings Walk indoor shopping centre in Gloucester. It comprises of two floors with the ground floor being retail and the first floor being used for storage and a staff room with a total area of 160.37m^2 and an area ITMS of 56.61m^2.

6. This hearing was held remotely via Microsoft Teams.

7. This document is not and does not purport to be a full verbatim record of proceedings.

Issue

8. The issue in dispute was the price per square metre for zone A of the subject property which the VO submitted was not unreasonable at £850/m^2. The appellant's agent submitted that a reasonable zone A rate was £682/m^2.

Evidence and Submissions

9. The evidence bundle before the panel comprised all of the evidence disclosed and exchanged during challenge which included rental evidence and its analysis, the parties' skeleton arguments, expert witness statements and photographs of the subject property and other shops in its immediate locality.

10. The appellant's representative submitted that the appeal should be allowed, and the RV on the subject property should be reduced to £37,250 based on a zone A price of £682/m^2.

11. In consideration of the comparable properties admitted in evidence, Mr Sloan requested that the Tribunal dismiss the appeal and confirm the RV of £48,000 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 is 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. The RV on the subject property was disputed by the appellant on the basis that it is not in line with comparable properties in the locality. The subject property is held on a ten year lease from August 2016 at a headline rent of £48,000 pa with a five year rent review and tenant break clause. There was a six month rent free period worth £43,750. This, Mr Bullimore submitted was analysed to £682/m^2 for zone A supporting an RV of £37,250.

15. Mr Bullimore then drew the panel's attention to the fact that there was a Group Pre-challenge Review (GPCR) which the appellant was not party to. This included shops in Gloucester city centre and included properties neighbouring the subject property. As a result of the GPCR the tone on number 16 Kings Walk received a reduction in tone from £850/m^2 to £650/m^2 and numbers 18-20 and 10-12 Kings Walk both received a reduction in the tone from £850/m^2 to £750/m^2 and the subject property did not. Further the properties on Kings Walk had all been valued with the same tone in the 2010 list and Mr Bullimore did not see

any reason why the subject property should be given a different tone to those properties in the 2017 list.

16. The panel was aware that the analysed rent of the subject property was the first piece of evidence in the basket of evidence and that was followed by the tone of similar neighbouring properties. These would all be weighted in the basket of evidence required to calculate an RV for the subject property. The panel put weight on this evidence.

17. Mr Sloan submitted that the form of return (FOR) for the subject property outlined that it was held on a ten year lease but had a six month period for redecoration and not fit out. The rental analysis therefore gave a value of £847.91/m^2 and supported the tone of £850/m^2. The rental evidence demonstrated that retail units closer to Eastgate Street commanded higher rents than those closer to Station Road and so 4 Kings Walk and 10-12 Kings Walk still had a tone of £850/m^2.

18. Mr Sloan argued that in connection with the comparable properties referred to by the appellant the rental evidence required too much adjustment to be helpful. He therefore submitted that little weight should be placed on these properties in the basket of evidence. He drew the panel's attention to the comparable properties relied on by the VO being 22, 4, 10-12 and 18-20 Kings Walk all of which had a tone of £850/m^2 and supported the tone for the subject property of £850/m^2.

19. The persuasive or legal burden of proof was on the appellant to prove his case and the panel found that they had discharged that burden. The panel found that it had been provided with evidence to suggest that the tone of the subject property of £850/m^2 was unreasonable but that the tone of £682/m^2 was too low. Therefore, in line with the neighbouring property the panel determined that a tone of £750/m^2 was appropriate .

20. The appeal is therefore allowed in part and 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).

Order

21. Under the provisions of paragraphs (4) and (9) of Regulation 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Tribunal orders the Valuation Officer to alter the List within two weeks of the date of this order to show a revised Rateable Value of £43,000 with effect from 1 April 2017.

Date: 15 May 2023

Appeal number: CHG100595772

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