THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; Material change in circumstances; Shop and Premises; accuracy of rateable value; rental and comparable evidence considered; found that weight of evidence supported a reduction in the assessment of subject property; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141*. Decision: Allowed in part.*

RE: 14 Humberstone Gate, Leicester, LE1 3PH

APPEAL NUMBER: CHG100719029

BETWEEN:	TUI UK LTD (Represented by Colliers)	Appellant
	and	
	Joanne Moore (Valuation Officer)	Respondent

PANEL:	Mrs X Holt (Senior Member) Miss R Punia
REMOTE HEARING #3 :	27 June 2023
CLERK:	Mr J N Massey
APPEARANCES:	Mr J Rymond of Colliers for the Appellant Mr M Mattok for the Valuation Officer.

Summary of decision

1. Appeal allowed in part. The panel considered that the existing entry in the Rating List for the appeal property of Rateable Value (RV) £65,000 was excessive and determined that the evidence showed that an RV of £59,750 was reasonable for the period 30 October 2019 to 1 February 2021 whilst building works were taking place.

Introduction

2. This was a 2017 Rating List appeal. 14 Humberstone Gate, Leicester, LE1 3PH (“the appeal property”) had been entered in the 2017 rating list as ‘Shop and Premises’ at an RV of £76,500 with effect from 1 April 2017.

3. The challenge proposal was submitted by Colliers on behalf of TUI UK Ltd and was received by the Valuation Officer on 18 March 2021. It had been made on the grounds that the RV shown in the rating list on 30 October 2019 was wrong as a result of a material change of circumstances. A revised RV of £38,750 was proposed with effect from 30 October 2019.

4. The Valuation Officer issued a challenge case decision notice on 2 September 2022, which stated that based upon the evidence and information available, the proposal was not well founded, but the rating list entry of £76,500 RV was excessive and proposed a revised RV of £65,000 for the period of the building works.

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 22 June 2022.

6. The appeal property was a shop on the external part of Haymark Shopping Centre, with retail space on the ground floor and a staff area and storage on the first floor. It had an agreed area of 127.11m2 (52.48 m^2 in terms of Zone A) and entered the rating list at a zone A rate of £1,450 per m^2 plus £7 per m^2 for air conditioning.

7. The appellant traded as a travel agent and occupied the shop on a 10 years' lease which commenced on 6 January 2016 on internal repairs terms. The headline rent was £77,500 and at the outset of the lease term the appellant benefited from a 9 months' rent-free period.

8. In order to assist the tribunal, the parties had agreed all basic facts and the analysis of the competing rental evidence.

9. Both parties appeared before the panel in a dual capacity as both Advocate and Expert Witness. The statement of truth signed by Mr Rymond indicated that he was acting on a success related fee as Advocate and on a fixed fee as Expert Witness. 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).

10. The panel therefore, considered the "expert" evidence and attached such weight to it as it saw fit.

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

Issue

12. The issue between the parties concerned the RV of the subject property. The challenge had sought a revised valuation of £38,750 based on a Zone A rate of £855 per m^2 and a temporary allowance of 15% for the period building works were taking place on the upper floors of the subject building. During the challenge process, the parties had agreed that a 10% allowance was reasonable for the disturbance caused by the building works and the respondent had agreed a reduction in the Zone A rate to £1,360 per m^2.

13. At the hearing, Mr Rymond sought a revised Zone A rate of £920, which resulted in an RV of £44,250. Mr Mattok defended the respondent's proposed valuation of the subject property at RV £65,000, based on a zone A rate of £1,360 per m^2. The valuations sought by both parties incorporated the agreed 10% allowance for building works and were effective from 30 October 2019 when the works commenced.

Evidence and Submissions

14. The evidence bundle before the panel comprised all of the evidence disclosed and exchanged during the challenge which included rental evidence and its analysis, the parties' skeleton arguments, expert witness statements, a GOAD plan and an ariel view of the locality. The parties had also submitted jointly a table of both parties' comparable properties detailing the agreed analysed rent for each.

Decision and reasons

15. The term 'rateable value' is defined in paragraph 2(1), 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 determination is to be made;
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> 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 is 21 November 2019 which was the date the accuracy of the check was confirmed.

18. The parties had agreed that an end allowance of 10% was applicable for the period 30 October 2019 to 1 February 2021 to reflect the disturbance caused by the building works taking place for that period. The matter for the panel to determine was the tone, or zone A price to be applied for that period.

19. Both parties had referred *to Lotus and Delta v Culverwell*. This Lands Tribunal judgment provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property was considered to be the correct starting point but, where available, rents on similar properties were also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.

20. The rent on the subject property had been agreed on 6 January 2016 and the parties had agreed that this rent analysed to a zone A rent of £1,163 per m^2. Both parties suggested that less weight should be placed on the rent on the subject property, as the appellant had previously occupied the neighbouring unit and the rent on the subject property formed part of a surrender and new lease deal. The panel agreed that this rent was potentially tainted by the existing relationship between the appellant and the landlord when it was agreed, and therefore it was necessary to test this rent by comparing it with those of the parties' comparable properties.

21. The appellant placed most weight on the rent agreed on 18 Humberstone Gate, which had been agreed on 16 January 2015 on a new ten-year lease. The rent on this property had been analysed to an agreed figure of £920 per m^2, which the appellant considered reflected the rent which would have been agreed for the subject property on the AVD.

22. Mr Mattok referred to a basket of rents of shops on Humberstone Gate, and argued that these showed that the rent on 18 Humberstone Gate was an outlier. He considered that the rental evidence on other properties demonstrated a trend in the locality of falling rents, from just under £1,500 per m^2 in November 2012 to between £1,158 and £1,352 per m^2 in 2016 and he considered this supported the revised rate of £1,360 applied to the subject property.

23. The panel noted that the rent on 18 Humberstone Gate was agreed closest to the AVD, however it required some adjustment in terms of incentives. Whist individually the panel considered the respondent's comparable rents held less weight than that of 18 Humberstone Gate, it considered that the basket created by those rents clearly showed the rent on 18 Humberstone Gate to be an outlier. The panel considered that this was supported by the assessment of 18 Humberstone Gate at £1,450 per m^2 which had not been challenged by the occupier.

24. Although little weight had been placed by the parties on the subject rent, the panel considered that the agreed analysis of the rents of 26 Humberstone Gate and 28 Humberstone Gate at £1,223 and £1,352 indicated that subject rent was not far off the open market rents being agreed in early to mid-2016 for similar sized retail units on Humberstone Gate.

25. Taking into account the fall in rents demonstrated between late 2012 and mid 2016, the panel considered that rents agreed at the AVD would have been slightly higher than in 2016. Having considered both parties' evidence and the rental analysis for properties in the locality, the panel concluded that the zone A rate of £1,360 per m^2 adopted by the respondent was excessive and that the rental evidence for the subject property and neighbouring adjacent retail units on Humberstone Gate supported a reduction to £1,250 per m^2.

26. The panel therefore concluded that a reduction in the RV of the subject property to £59,750 was reasonable for the period 30 October 2019 to 1 February 2021 and the appeal is therefore allowed in part.

Order

27. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry for 14 Humberstone Gate, Leicester, LE1 3PH to £59,750 for the period 30 October 2019 to 1 February 2021, within two weeks of the date of this order.

28. The ratepayer is also entitled to a refund in full of the fee paid in accordance with regulation 13E (1)(a) of the Non-Domestic Rating (Alteration of Lists and Appeals)(England) Regulations 2009. The refund will take around six weeks to process.

Date: 13 July 2023

Appeal number: CHG100719029

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.