THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeal; 2017 Rating List; Shop and premises; Accuracy of compiled list entry; rental evidence; comparable evidence; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; Appeal allowed.

RE: Basement and Ground Floor, 57- 59 Long Acre, London, WC2E 9JL

APPEAL NUMBER: CHG100732209

BETWEEN:	All Saints Retail Ltd	Appellant
and		
	Andrew Ricketts (Valuation Officer)	Respondent

PANEL:	Mrs T Watson (Presiding Senior Member) Mrs S Patel (Senior Member)
CLERK:	Mr J Massey
REMOTE HEARING 2:	Tuesday 18 April 2023
APPEARANCES:	Mr D Price of Gerald Eve LLP (appellant's representative) Mr C Tawonezvi (Valuation Officer's representative)

Summary of Decision

1. The appeal was allowed as the panel determined a Zone A value of £3,450 per m². The assessment was therefore reduced from £550,000 to £462,500 Rateable Value (RV) with effect from 1 April 2017.

Introduction

2. The appellant had made a challenge against the accuracy of the compiled list assessment of the subject property in the 2017 Rating List, by way of a proposal that he served on the Valuation Officer (VO) on 24 September 2021. After considering the proposal and evidence submitted during the challenge period, the VO decided that the proposal was not well founded but that the RV in the list of £735,000 was not reasonable and amended the entry to RV £550,000.

3. A decision notice to that effect was served on the appellant on 9 June 2022 and their representatives then appealed the VO's decision to the tribunal on 7 October 2022, on the grounds that the current valuation for the hereditament was not reasonable, under Regulation 13A of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009.

4. The subject property was a shop within a parade of retail units on Long Acre in Covent Garden. It had an agreed total area of 555.47m^2 or 133.21m^2 in terms of Zone A (ITZA).

5. The appellant traded as a clothing retailer and occupied the shop on a 10 year lease which was renewed on 10 December 2014 on full repairing and insurance terms. The headline rent was £550,000 per annum (pa). At the outset of the lease term the appellant benefited from 18 months' half rent which equated to a 9 months' rent-free period.

6. As Mr Price appeared on behalf of the appellant as both 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).

7. Mr Price declared that he was not instructed under any conditional fee arrangement. He confirmed 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 the evidence supported the client's case. The panel, therefore, considered the "expert" evidence and attached such weight to it as it saw fit.

8. This hearing was held remotely via Microsoft Teams.

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

Issue

10. The issue in dispute before the panel was the zone A value to be applied to the subject property. The appellant sought a reduced entry of £462,500 RV based on a zone A value of £3,450 per m^2. On behalf of the respondent, Mr Tawonezvi defended the VO's revised assessment of £550,000 based on a Zone A value of £4,100 per m^2.

Evidence and submissions

11. 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.

Decision and reasons

12. In the case under consideration, the panel had analysed the competing evidence having regard to the authoritative guidance in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA141.

13. The starting point for consideration was the actual rent passing on the subject property. The rent resulted from a lease renewal effective three and a half months prior to the AVD and was

on full repairing and insurance terms. The appellant benefited from a nine months' rent-free period which the appellant's representative had analysed as incentive and devalued the rent to £3,451 per m^2 (ITZA). The respondent considered that three of the nine months' rent-free period was for fit-out, so only six months should be considered as incentive, resulting in an analysed rent of £3,659.74 ITZA.

14. The panel did not consider that any part of the rent-free period was for fit-out as this was a lease renewal for an existing occupier and there was no evidence before it that fitting out would have been required. Whilst it was aware that the respondent considered it unusual for a rent-free period to be agreed on a lease renewal, the panel accepted that such an agreement may be preferred by a landlord in order to keep headline rents at a higher level, or by a tenant in order to increase cashflow for a specific period. It was therefore satisfied that the half rent period, equivalent to nine months rent-free, was purely incentive and the rent on the subject property had been correctly analysed at £3,451 per m^2 ITZA by the appellant.

15. Mr Price argued that the rent passing on the subject property was the best evidence and the tribunal need not look any further. However, Mr Tawonezvi contended that little weight should be attached to the actual rent, as it was a lease renewal rather than a new letting. He considered that the evidence of new lettings indicated that a zone A rate of £4,100 was not excessive for the subject property.

16. The panel noted that the zone A rates adopted for shops along Long Acre reduced as one travelled further from Covent Garden underground station. The two properties adjacent to the subject property, 55 and 56 Long Acre were both assessed at zone A rates of £5,500 per m^2. Their rents were agreed on new leases on 19 July 2016 and 1 March 2017 and had been analysed at £5,094.06 and £4,518.78 per m^2 ITZA respectively. The panel considered that these rents held less weight than the subject rent due to the much smaller size of the units and the remoteness of the start dates of the leases from the AVD.

17. In support of a lower rate for the subject property, Mr Price had referred to 63 Long Acre, for which the adopted rate was £3,500 per m^2 ITZA. The panel noted that this was located further along Long Acre on the other size of Bow Street, so it would expect it to achieve a lower rent based on its location. However, 63 Long Acre was 55.45 m^2 ITZA and therefore less than half the size of the subject property. The panel considered that the rent agreed on the subject property indicated that quantum was a factor and that this factor would outweigh the difference in location of the subject property and 63 Long Acre.

18. The subject property was also around four times larger than 55 Long Acre and 56 Long Acre, which were on similar pitches next door to the subject property. Their rents had been agreed two years and one year after the AVD respectively when both parties considered rents to be higher than at the AVD. Adjusting for this and the difference in size, the panel considered that these rents supported a reduction of the rate adopted for the subject property in line with its own rent.

19. Having regard to the rents which were agreed on 49 Long Acre, 51 Long Acre and 54 Long Acre submitted by the respondent, the panel noted that these had analysed to between £4,017.84 and £6,744.10 per m^2 ITZA which it considered supported the adopted rates of £6,000 per m^2 ITZA for shops which were located on the other side of Hanover Place. However, the panel considered that these properties were located in more valuable pitches than the subject property and placed less weight on this evidence.

20. Having regard to the evidence submitted before it, the panel was not satisfied that there was evidence before it to demonstrate a tone of value had been established for the shops on Long Acre. Although the rating list was almost 6 years old, the existing entries had not been tested on appeal. This evidence supported the appellant's argument that the tone was not settled and that instead it was still to be properly tested.

21. In this case, the panel determined, in the absence of an established tone, that the rental evidence before it provided the best evidence. Having had regard to the whole basket of rental evidence, it placed most weight on the subject rent which had been agreed just three and a half months before the AVD. It was satisfied that the rent agreed on the lease renewal reflected the open market rent at the date it was agreed as it had been fully negotiated with agents acting on both parties' behalf.

22. Having considered all of the evidence before it, the panel considered that the appellant's grounds of appeal were therefore made out as the existing assessment was unreasonable. The appeal was therefore allowed.

Order

23. In accordance with Regulation 38 (4) and (9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the VO is ordered to alter the list entry for the subject property to £462,500 RV with effect from 1 April 2017. The Valuation Officer must comply with this Order within 2 weeks of its making.

Refund of appeal fee

24. A refund of the paid fee will now be arranged under Regulation 13E of the NDR (Alteration of Lists and Appeals) Regulations 2009. The refund will take around six weeks to process.

Date: 9 May 2023

Appeal number: CHG100732209

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.