THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 list appeal; Shop and Premises; Local Government Finance Act 1988; Statutory Assumptions; Telereal Trillium v Hewitt (VO) [2019] UKSC 23 – Panel considered there was general demand for the subject property; Appeal dismissed.

Re: Units 1-3, The Square, Long Down Avenue, Bristol, BS16 1GU

APPEAL NUMBER: CHG100732337

BETWEEN:	Balfour Beatty Utility Solutions Limited Represented by Matthews & Goodman LLP	Appellant
	and	
	Alexandra Morley (Valuation Officer)	Respondent

PANEL:	Mrs X Holt (Senior Member) Miss R Punia
CLERK:	Mr James Massey
REMOTE HEARING 3:	27 June 2023
PARTIES PRESENT:	Mr B Rees of Matthews & Goodman LLP- appellant's representative Mr M Pocock - Respondent's representative

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Summary of decision

1. The appeal was dismissed. The panel did not consider that the particular characteristics of Units 1-3, The Square, Long Down Avenue, Bristol, BS16 1GU ("the subject property") were sufficient to override the general demand for retail premises in the locality.

Introduction

2. This appeal has been brought in respect of the subject property which was entered in the 2017 rating list as "shop and premises" at rateable value (RV) £124,000 with effect from 4 October 2017.

3. The challenge process began on 24 September 2021 when the appellant had made a proposal to the Valuation Officer (VO) that the entry shown in the rating list for the appeal property on 4 October 2017, was wrong and that it should be reduced to RV £100 on the basis that it was obsolete taking into account the demand for the subject property at the AVD.

4. Having considered the challenge the VO issued a decision on 26 August 2022 stating that the VO was of the opinion that the proposal was not well founded.

5. In accordance with the regulations[1], an appeal was made on 3 January 2023 to the Valuation Tribunal for England (VTE) on the grounds that the valuation for the appeal property was not reasonable.

6. The subject property is a ground floor retail unit with a total area of 959.82m^2 with residential apartments above in 'The Square' shopping centre in Cheswick Village, a newly constructed residential development in Stoke Gifford. Cheswick Village is situated in close proximity to the M32 motorway providing access to the M4 and M5 motorways and Bristol city centre.

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

Issue

8. The correct RV for the subject property based on rent achievable on the AVD of 1 April 2015 and considering its physical state of repair on the material day of 4 October 2017.

Evidence and submissions

9. The evidence bundle comprised all of the documents exchanged between the parties as part of the challenge process: VO's initial response to the challenge, VO's challenge case decision notice; appellant's challenge submission; photographs and location plans of the subject property; and a copy of the CBRE sales brochure for Units A,C & D The Square. One day before the hearing, Mr Pocock submitted a copy of a brochure produced by Alder King for the letting of retail units at The Square. Mr Rees agreed to its inclusion and it was therefore allowed by the panel as evidence.

10. Mr Rees 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 Rees' declaration of truth included a statement that he was not instructed under any conditional fee arrangement. Mr Rees 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 the client's case.

11. Mr Rees explained that the appellant built the retail units in the shopping centre of Cheswick Village further to planning consent which was granted on the basis that all of the ground floor accommodation be developed as retail/commercial units. There were four blocks containing thirteen ground floor retail units with a total of 69 apartments on their upper floors. The units were in general completed and marketed for letting towards the end of 2015, although the billing authority did not issue a completion notice in respect of the subject property until October 2017.

12. He stated that most of the retail units in Blocks A, C & D had been let to tenants by 2018 when the freehold of these three blocks was sold by the appellant in 2018. Block B, which comprises the subject property could not be let and was not included in the sale as it was considered that there was little prospect of it being let. Permission was sought and eventually

[1] The Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, regulation 13A.

granted to convert the subject property to residential units. He considered that due to the planning requirements, too many retail units had been built on the site, of which the subject property was the largest. A convenience store would normally occupy the largest unit on such a development but Southern Cooperative Ltd had already taken a lease on Units 4 & 5 so there was little prospect of letting the subject property to a similar tenant.

13. Mr Rees considered that the location of the subject property to the rear of the development meant that it was less visible than the units in the other blocks, which was another reason why it could not be let.

14. Mr Rees argued that the fact that it had never been let supported his contention that there was no actual demand for the subject property due its size and location. He referred to the Supreme Court decision in *Telereal Trillium v Hewitt (VO)* [2019] UKSC 23, a copy of which was provided to the panel by the clerk. His understanding of this decision was that under the rating hypothesis 'general demand' for a particular type of property can be carried forward to a particular property even if there is no proven actual demand for that property. However, he considered that if the lack of demand arises from the particular characteristics of the property in question, then this can override 'general demand'. In the case of the subject property, he considered that its size and inferior location would override the assumed 'general demand' for retail units in The Square. He considered the fact that it had never been let, either as a whole unit, or as separate units demonstrated that there was no actual demand for the subject property, and considered that the lack of demand should result in a nominal RV of £100.

15. Mr Pocock stated that that the hypothetical tenancy in rating law assumes a hypothetical landlord and a hypothetical tenant and if there is 'general demand' for a particular type of property, then this can be carried forward to a particular property even if there is no proven actual demand for that property.

16. He considered that the letting of other retail units with similar attributes to the subject property in The Square proved there was a 'general demand' in the locality at the AVD. Whilst the appellant had contended that the other units in The Square were not directly comparable to the subject property due to their smaller size, he argued that the subject property could have been let as single units or in any combination, as demonstrated by the letting brochure. He also provided details of other retail units in the wider locality, but in the same valuation scheme as the subject property, for which more than a nominal rent was being paid which he argued demonstrated a general demand for retail units of a similar size to the subject property in its general locality.

17. With regard to the position of the subject property within The Square, Mr Pocock stated he had inspected the site and found that one third of the subject property was visible from the furthest corner of the square fronting the development on the main road. He stated the development differed from a traditional high street and most of the trade would be from the local residents and position and visibility was therefore less of a factor. He stated that The Square is the main retail area in a growing development of over 1,000 homes, close to the University of West England, the large Abbey Wood MOD facility, a major bus route and the M32 motorway. There was also parking to the rear of the shopping centre, where the subject property is located. He was of the opinion that the differing characteristics of the subject property did not override the 'general demand' which had been demonstrated by the letting of retail units in the locality.

18. Mr Pocock did not consider that the fact that the subject property had been marketed from late 2015 until early to mid-2018 without finding a tenant proved that there was no actual demand

for the subject property, as there was no evidence that attempts had been made to let it at a lower rent or that other incentives had been offered. He also considered that the intention to convert the subject property to residential accommodation indicated that the marketing campaign for letting the subject property as a commercial unit would have been less rigorous than for the other units in The Square.

Decision and reasons

19. The subject property 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 set out 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;

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”.

20. Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 4 October 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) of the Act, in relation to both the physical nature of the property and its mode or category of use.

21. Mr Rees was not contending that the subject property was obsolete in the same manner as Mexford House which was the subject of the *Telereal* decision where there had been demand but it had fallen away. The pivotal factor in Mr Rees’ case was that there had never been an actual demand for the subject property as there was an excess supply of retail premises in the locality at the time it was completed, and he considered this was evidenced by the fact that it had not been let and had been converted to residential accommodation. The panel however did not consider that there was a distinction - actual demand could be proven for a property which it is actually let, but that property would continue to be assessed by general demand when it became vacant, unless it could be proven there was no general demand.

22. The panel was aware that in accordance with the rating hypothesis, demand must be assumed, and should be assessed by reference to general demand. This was expounded in the Supreme Court judgement in *Telereal* as follows, and although this related to an office building, the panel considered would also apply for retail units:

“Whether the hereditament is occupied or unoccupied, or an actual tenant has been identified, at the relevant date is not critical. Even in a “saturated” market the rating hypothesis assumes a willing tenant, and by implication one who is sufficiently interested to enter into negotiations

to agree a rent on the statutory basis. As to the level of that rent, there is no reason why, in the absence of other material evidence, it should not be assessed by reference to "general demand" derived from "occupation of other office properties with similar characteristics".

23. Mr Rees accepted there was a 'general demand' demonstrated for smaller retail units in the more prominent parts of The Square but considered that this could not be transplanted to show there was a general demand for the subject property due to its differing characteristics.

24. With regard to those differing characteristics, the panel did not consider that the subject property's location within The Square was a major factor in determining demand. This was a local shopping centre serving the neighbourhood where the panel did not consider footfall and visibility was a major factor, and no evidence had been submitted to demonstrate any difference in value caused by location within similar types of shopping centre.

25. With regard to the size of the subject property in relation to the other retail units at The Square, the panel noted that it was around twice the size of the next largest unit. The letting brochure described it as three separate units of between 167m^2 and 370m^2 and the panel was satisfied that there was general demand for these smaller units as demonstrated by the letting of the other units at The Square. Mr Rees had referred to an excess in the supply of retail units in the locality, but the panel had not been provided with any evidence of other vacant retail units in the locality to demonstrate this, apart from those in The Square, which had all subsequently been let after their sale by the appellant.

26. Having considered the arguments put forward by the parties, the panel was satisfied that there was a general demand for retail premises in The Square and the wider locality, with tenants paying substantially more than a nominal rent for those premises at the material day. It was not persuaded by Mr Rees that the difference in size of the subject property and its position in The Square was sufficient to override the general demand.

27. The panel therefore determined that the current entry for the subject property in the valuation list of £124,000 RV was reasonable and dismissed the appeal.

Date: 13 July 2023

Appeal number: CHG100732337

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.