THE VALUATION TRIBUNAL FOR ENGLAND

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

RE: Boots UK Limited, 358 Muswell Hill Broadway, London N10 1DJ

APPEAL NUMBER:	CHG100736259	
BETWEEN:	Boots UK Limited	Appellant
	and	
	Mr A Ricketts, Valuation Officer	Respondent
PANEL:	Mr D Winters (Senior Member) and Mr M Bhatti	
CLERK:	Mrs L Horne	
REMOTE HEARING ON:	Tuesday 16 May 2023	
APPEARANCES:	Mr J Taylor from G L Hearn, representing the appellant Mr S Dingle representing the Valuation Officer	

Summary of decision

1 Appeal allowed in part. The panel decided that the present Zone A price of £900 per m^2 was reasonable. Following the agreement of the Valuation Officer to accept the appellant's floor areas, the panel confirmed a revised rateable value (RV) of £65,000 with effect from 1 April 2017.

Introduction

2 This is a 2017 rating list appeal. 358 Muswell Hill Broadway, London N10 1DJ, (the 'appeal property') had been entered in the 2017 rating list as 'shop and premises' at a RV of £67,000 with effect from 1 April 2017.

3 The challenge proposal was submitted by G L Hearn on behalf of Boots UK Limited and was received by the Valuation Officer on 7 October 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 £45,750 was proposed with effect from 1 April 2017.

4 The Valuation Officer issued a challenge case decision notice on 4 January 2022 which disagreed with the proposed alteration of the list and stated that the rating list entry was reasonable based on the evidence and information available.

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 4 May 2022.

6 As Mr Taylor 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 Taylor 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 or not the evidence supported the client's case.

8 The subject premises comprises a building arranged over four floors with ground floor retail accommodation and two flats above. It is located on Muswell Hill Broadway, a residential area amongst amenities including shops, restaurants and bars.

9 The present valuation of £67,000 RV is based upon a total area of 217.89m^2, or 74.05 m^2 in terms of Zone A (ITZA), at a Zone A price of £900 per m^2, less 5% for layout/shape.

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

Preliminary issue

11 Mr Taylor requested the inclusion of a rent which had been viewed and discussed as a form of return (FOR) but not included in the bundle. Mr Dingle confirmed that he was happy for this to be raised, but stated that he was unable to comment on Mr Taylor's rental analysis.

12 The panel decided to allow Mr Taylor to present his rental analysis given that the property had been discussed previously and no objection had been raised by the Valuation Officer.

Issues

13 Prior to the hearing the Valuation Officer confirmed that the appellant's survey details had been accepted and the total floor area agreed at 211.59 m^2, therefore the only issue in dispute was the Zone A price per m^2 to be adopted in the valuation.

Evidence and submissions

14 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.

15 In support of his proposed Zone A price of £630 per m^2, Mr Taylor relied upon the subject rent and comparable assessment evidence from the locality.

16 Mr Dingle confirmed that he represented the Valuation Officer as both advocate and expert witness. He defended the present Zone A price of £900 per m^2 with reference to comparable rental evidence. Following the acceptance of the appellant's floor areas, he requested that the panel determine a revised RV of £65,000 with effect from 1 April 2017.

Decision and reasons

17 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.

18 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).

19 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.

20 Neither party had referred specifically to *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141, however, the panel was aware that 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. 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 required consideration of the rents of similar properties and comparable assessments. In light of all the evidence an opinion could then be formed.

21 The appeal property was subject to a 5 year lease effective from 22 December 2014 at a rent of £75,000 per annum (pa). This had since expired and the tenants were holding over.

22 The panel noted that there had been some question as to whether the flats formed part of the lease. This was resolved at the hearing following Mr Taylor providing an extract of the lease. While the Valuation Officer accepted that living accommodation was included and that his analysis of £1,012.83 per m^2 would require adjustment, he submitted that less weight should be attached to the subject rent as there were complex issues involved when analysing residential properties.

23 Mr Taylor stated that the flats were valued at £26,400 pa. Along with associated costs, when removed from the rent of £75,000, he contended that the current Zone A price of £900 per m^2 was excessive.

24 The panel considered that Mr Taylor had relied too heavily on the subject rent. He had not provided an analysed price per m^2 or any evidence to support the value of the flats at £26,400. When asked by the Valuation Officer he confirmed that his client had provided the figures, but he could not provide any other details as he had not seen the rental agreement.

25 The only other rental evidence cited by Mr Taylor was in respect of 346 Muswell Hill Broadway. He analysed a rent effective from 29 September 2016 at £610 per m^2. As the Valuation Officer had not been able to comment on the analysis, together with the fact that it was one year post AVD, the panel decided that little weight could be attached to that rent.

26 The Valuation Officer presented four pieces of rental evidence in support of a Zone A price of £900 m^2 for the appeal property:

(i). 376 Muswell Hill Broadway - a rent review of £50,000 effective from 29 September 2014 analysed at £938.61 per m^2 Zone A.
(ii). 378 Muswell Hill Broadway - a rent review of £38,000 effective from 25 December 2013 analysed at £967.17 per m^2 Zone A.
(iii). 362 Muswell Hill Broadway - a rent review of £68,062 effective from 19 September 2014 analysed at £1,049.51 per m^2 Zone A.
(iv). 360 Muswell Hill Broadway - a new 10 year lease at a rent of £82,360 effective from 15 June 2015 which included two flats above the shop at a combined annual rent of £16,521. This reduced the analysis of the Zone A rate from £1,142 to £913.23 per m^2.

27 Mr Taylor referred to eight comparable properties situated within the same parade as the appeal property (numbers 344, 336-338 and 328-330) and also in the locality (numbers 304, 300-302, 290, 288, 278) assessed at £630 per m^2. He submitted that the visibility of the appeal property from Muswell Hill Broadway created a natural break and that a tone of £900 per m^2 was not supported by the subject rent.

28 The panel referred to the annotated goad plan and noted that numbers 360 to 378 were immediately adjacent to the appeal property and assessed at £900 per m^2. In the other direction, the two properties next to the appeal property, 348 and 346 were also assessed at £900 per m^2. The properties in the same parade assessed at £630 per m^2 were situated further away from the appeal property, around a corner facing onto Dukes Avenue. The other properties assessed at £630 per m^2 were in the opposite parade and therefore carried less weight.

29 The panel decided to attach most weight to the Valuation Officer's rental evidence as it was drawn from properties closest to the appeal property in the subject parade. The panel considered that the appeal property was in a prominent position and was not persuaded by Mr Taylor's suggestion that there was a natural break at this point.

30 The panel held that the rental evidence drawn from the closest properties in the parade, which ranged from £913.23 per m^2 to £1,049.51 per m^2 demonstrated that the adopted tone of £900 per m^2 Zone A was not unreasonable. Particular attention was paid to 360 Muswell Hill Broadway as this rent also included two flats. This was a new lease which had taken effect two months after the AVD, and it therefore provided compelling evidence in support of a tone at £900 per m^2 Zone A.

31 The panel concluded that the weight of the evidence supported £900 per m^2 for the appeal property. The appeal was allowed in part to reflect the adoption of the appellant's floor areas, and therefore the panel determined a revised RV of £65,000 with effect from 1 April 2017.

Order

32 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 £65,000 with effect from 1 April 2017.

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

34 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: 5 June 2023

Appeal number: CHG100736259

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.