

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 dismissed.

RE: Grd Flr 48, Westbourne Grove, London, W2 5SH

APPEAL NUMBER: CHG100740498

BETWEEN: Comfix Ltd Appellant
Represented by Altus Group

And

Mr Andrew Ricketts Respondent
(Valuation Officer)

PANEL: Mr D P Hayes (Presiding Senior Member)
Mr S Levy (Senior Member)

CLERK: Mr J Massey
REMOTE HEARING # 2 Monday 23 October 2023

APPEARANCES: Mr H Edwardes from Altus Group (Appellant's representative)
Ms W Leung - Valuation Officer's representative

Summary of Decision

1. The appeal was dismissed. The panel considered that the existing entry in the Rating List for Grd Flr 48, Westbourne Grove, London, W2 5SH (the "subject property") of Rateable Value (RV) £49,750 was reasonable.

Introduction

2. This was a 2017 Rating List appeal. The subject property had been entered in the 2017 rating list as 'Shop and Premises' at a RV of £49,750 with effect from 1 April 2017.
3. The challenge proposal was submitted by the appellant's representatives and was received by the Valuation Officer (VO) on 22 October 2021. It had been made on the grounds that the

RV shown in the rating list on 1 April 2017 was unreasonable. A revised RV of £36,750 was proposed with effect from 1 April 2017.

4. The Valuation Officer issued a challenge case decision notice on 8 February 2023, which stated that based upon the evidence and information available, the rating list entry of £49,750 RV was reasonable and there would be no amendment.
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 subject property is not reasonable. The appeal was received by the Tribunal on 31 May 2013.
6. The subject property comprised a shop situated on the ground floor in a parade of shops at the eastern end of Westbourne Grove, close to Royal Oak and Bayswater Underground stations. It had an agreed area of 58.69m² in terms of Zone A (ITZA).
7. Mr Edwardes appeared on behalf of the appellant as both advocate and expert witness. Mr Hayes 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).
8. It was established that Mr Edwardes' company would receive a conditional fee or some other success related arrangement if the rateable value was reduced as a result of the panel's decision. However, he declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and that he would comply with this as well as the requirements of his professional body regardless of whether the evidence supported the client's case.
9. 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.
10. Ms Leung's declaration of truth included a statement that she was not instructed under any conditional fee arrangement and declared that she understood and accepted that her duty was to the Tribunal in giving her evidence and she would comply with this as well as the requirements of her professional body regardless of whether the evidence supported the respondent's case.
11. This tribunal decision document is not and does not purport to be a verbatim record of proceedings.

Issue

12. The issue in dispute before the panel was the correct zone A rate to be applied to the subject property. The appellant sought a reduced entry of £36,750 RV based on a zone A rate of £630 per m². On behalf of the respondent, Ms Leung defended the Valuation Officer's existing assessment of £49,750 based on a zone A rate of £850 per m².

Evidence and submissions

13. 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 photographs of the appeal property and maps of the locality showing the location of the subject property and the parties comparable properties.

Decision and reasons

14. The term 'rateable value' is defined in paragraph 2(1), Schedule 6 to the Local Government Finance Act 1988 (as amended):
15. "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".
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 1 April 2017.
18. 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 which was referred to by both parties.
19. The starting point for consideration was the actual rent passing on the appeal shop. The rent was £60,000 per annum (pa) effective from 4 April 2017 and devalued to £1022.31 per m² but included the first-floor residential accommodation. Both parties agreed that minimal weight should be placed on the subject rent due to the inclusion of the residential accommodation and its remoteness from the AVD.
20. In terms of indirect rental evidence, Mr Edwardes referred to;

- Bst & Grd Flr 68, Westbourne Grove, London, W2 5SH, agreed area of 58.69m² in terms of Zone A (ITZA). Rent of £43,000 pa effective from 1 September 2019 agreed on a rent review and analysed by the appellant to £732.79 per m².
- Bst & Grd Flr Fnt 70, Westbourne Grove, London, W2 5SH, agreed area of 63.38m² in terms of Zone A (ITZA). Rent of £40,000 pa effective from 24 June 2015 agreed on a lease renewal and analysed by the appellant to £631.08 per m².
- Bst & Grd Flrs 31, Westbourne Grove, London, W2 4UA, agreed area of 57.85m² in terms of Zone A (ITZA). Rent of £25,000 pa effective from 5 May 2015 agreed on a new letting. This was a restaurant and premises which has been assessed at a main space rate of £500.00 per m². The appellant had devalued the rent to provide an equivalent zone A rate of £708 per m².

21. Mr Edwardes also referred to settlements on three shops, one at 14-16 Westbourne Grove and two on Bishops Bridge Road, at a zone A rate of £750 per m². These were located further east along Westbourne Grove, and its continuation, Bishops Bridge Road. He also referred to shops at the Western end of Westbourne Grove, which were all assessed at a zone A rate of £750 per m². He considered that the assessment of shops to the east and west of the subject property's parade, and the rents on two other shops on the same parade as the subject property (68 and 70) demonstrated that £850 per m² was excessive for the subject property.
22. In support of the current assessment of the subject property, Ms Leung referred to the rents passing on three shops, which she stated were on the same parade as the subject property and had all been assessed at a zone A rate of £850 per m². Prior to the hearing, on 6 October 2023, she had submitted to the appellant and the tribunal an amended rental schedule and street plan, the inclusion of which was not objected to by the appellant.
23. She considered that her comparable rental evidence suggested that the tone adopted for the subject parade was reasonable. She stated that the settlement and assessment evidence provided by the appellant was for shops which were not located on the same parade as the subject property. She referred to the variation of the tone adopted at either end of Westbourne Grove being supported by the rental evidence in those locations.
24. The panel noted that the appellant relied heavily on the rent passing on Bst & Grd Flr Fnt 70, Westbourne Grove, which was on the same parade as the appeal property and agreed just four months after the AVD. This was a lease renewal and had been analysed to £631 per m² and was the only evidence to support the appellant's proposed reduction to a zone A rate of £630 per m². The other rent provided by the appellant in the subject parade was for Bst & Grd Flr 68, Westbourne Grove, however the panel placed little weight on this as it had been agreed four years after the AVD. The panel also placed little weight on the analysed rent of £709 per m² for Bst & Grd Flrs 31, Westbourne Grove, as this was a restaurant, located in a different parade of shops where the adopted tone was £750 per m².
25. The respondent had provided three competing rents, all within the subject parade of shops, the rents of which had been analysed between £883.68 and £1411.43 per m². The closest rent to the AVD was that of Bst & Grd Flr 64, Westbourne Grove which was agreed nine months prior to the AVD and the respondent had analysed to £883.68. Mr Edwardes had referred to the (total) area of 183.7m² used by the respondent to devalue this rent, as he had provided a copy of the lease which showed the total area to be much larger. Having regard to this lease, Ms Leung considered that the adopted area from an inspection in 2013 was correct as, although the lease referred to '64 and 64 A Westbourne Grove and 6 Monmouth

Place' it excluded the residential elements of 6 Monmouth Place, and this was confirmed by the form of return completed by the occupier.

26. Having considered the opposing arguments, the panel was satisfied that respondent's recorded area for Bst & Grd Flr 64, Westbourne Grove was correct and so therefore was the analysis of its rent.
27. The panel placed less weight on the rent for 72 Westbourne Grove as it was agreed on a lease assignment over a year after the AVD. However, it did indicate that the adopted tone of £850 per m² for the subject parade was not excessive.
28. Having considered the analyses of the rents of shops in the subject parade provided by both parties, the panel considered that the basket of rental evidence, ranging from £631.09 per m² to £1411.43 per m² did not indicate that the adopted zone A rate for the subject property of £850 per m² was excessive, and the appeal was therefore dismissed.

Date: 20 November 2023

Appeal number: CHG100740498

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.