

THE VALUATION TRIBUNAL FOR ENGLAND



2017 Rating List appeal – retail park unit – weighting of rental evidence – was rental evidence from retail park too remote from antecedent valuation date – rental evidence from retail park some 50 miles distance in different county – appeal allowed

Re: Jolleyes Pet Supplies, Unit 1 Hailsham Retail Park, Diplocks Way, Hailsham, East Sussex, BN27 3JF

APPEAL NUMBER: CHG100744951

BETWEEN:	Jolleyes Pet Supplies	Appellant
	and	
	Ms D Bunyan	Respondent
	(Valuation Officer)	

PANEL: Mr W Read (Presiding Senior Member)
Ms P Jarrett (Senior Member)

CLERK: Mr A Jolly

REMOTE HEARING: Friday 8 September 2023

APPEARANCES: Mr J Watson of Evans and Payne LLP representing the appellant
Mr S Forbes representing the respondent

Summary of decision

1. Appeal allowed. Rateable Value £85,250 confirmed with effect from 29 June 2018 based upon a price per m² of £130.

Introduction

2. This appeal has been brought in respect of the following: An appeal was lodged by Evans and Payne LLP on behalf of the occupier on 28 April 2023 against the Valuation Officer's Challenge Decision Notice of 5 January 2023.
3. This tribunal decision document is not and does not purport to be a verbatim record of proceedings.
4. Mr Watson 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 Watson's declaration of truth included a statement that he was instructed under any conditional fee arrangement.

5. Mr Watson 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.
6. 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).
7. The panel therefore considered the "expert" evidence and attached such weight to it as it saw fit.
8. Mr Forbes was appearing as both advocate and expert witness.

Issues

9. The issue before the panel concerned price per m² to be adopted.
10. The appeal hereditament was one of three purpose-built retail units, built in 2002, on a small retail park with occupiers including Jolleyes Pet Supplies, Argos and Sussex Bed Centre. Wickes also occupied a standalone building next to the three retail units. It was situated on Diplocks Way, the main arterial route to Eastbourne. Jolleyes Pet supplies had been in occupation since 2002.
11. The appeal hereditament had been entered into the 2017 rating list at £98,500 based on a price per m² of £150 with the appellant's representative seeking a reduction to £85,250 based on a price of £130 per m².

Evidence and submissions

12. The bundles comprised all of the documents exchanged between the parties as part of the challenge process including the VO's case decision notice, assessment summaries and the appellant's challenge submission.

Decision and reasons

13. Mr Watson referred to the Land Tribunal decision of *Lotus and Delta v Culverwell (Valuation Officer) and Leicester City Council* [1976] RA 141 and stated that the starting point is the rent on the appeal property. He informed the panel that the rent review from July 2017 analysed to £147.03 per m² and that the rent review from July 2012 analysed to £128.32 per m² which was a nil increase from the rent set in July 2007.
14. As further support Mr Watson referred to the rents for the other two retail units on the park. Unit 3 was occupied by Argos and a nil increase rent review in 2013 analysed to £122.08 per m². He also stated that there was a nil increase at its 2018 rent review. Unit 2, occupied by Sussex Bed Company, where the rent since July 2008 had analysed to £131.03 per m². He stated that the July 2017 review increased the rent but this had been due to a name change on the tenancy.
15. Mr Watson did not consider the comparable hereditaments cited by the VO to be comparable due to being located some 50 miles away in Canterbury, Kent. He considered

the Maybrook Retail Park was superior to the location of the appeal hereditament, it was a larger park with more occupiers including Marks and Spencer's and in a more affluent area. He provided details of the differences between the areas including differences in rental levels, population, diversity, health, deprivation and income. He considered that as the rents on retail units in Maybrook Retail Park analysed close to £150 per m² this supported his contention that £130 per m² should apply to the appeal hereditament.

16. Mr Forbes stated that this appeal related to the fifth challenge and followed an increase in RV following a temporary reduction for roadworks and had been made late within the life of the 2017 rating list. He stated that there had been no other challenges in relation to the remaining units. The property was located close on the A22 road into Eastbourne and close to a large BMW and Mini showroom. He stated that the appeal hereditament and the neighbouring units had been valued at £150 per m² and the neighbouring Wickes, a larger building, had been valued at £127.50 per m².
17. He considered that the rents within Hailsham Retail Park were too remote from the AVD and therefore he had widened his search to where rental evidence closer to the AVD was available. Whilst he accepted that Canterbury was a more affluent area, he was of the opinion that the retail parks were similar and would also be similar in value.
18. Unit 4 Maybrook, a rent from October 2014 analysed to £161.46 per m² and Unit 5, a rent from August 2015 analysed to £151.98 per m². The units had been entered into the 2017 rating list with a price per m² of £150 and he considered the rents, which were closer to the AVD therefore provided the best rental evidence and supported £150 per m² being applied to the appeal hereditament.
19. The panel was aware that rental evidence close to the AVD would normally provide the best evidence but that the rental evidence should be on comparable properties.
20. The panel noted that the appeal hereditament and the comparable properties cited by the VO were in different counties some 50 miles apart. It also noted that the retail park in Canterbury was larger with more occupiers and the units were newer. Whilst the respondent considered rental levels would be similar, the panel was not persuaded this would be the case. Rents on the units in Hailsham, albeit before and after the AVD, showed values below £150 per m² where rents in Canterbury showed levels of values above £150 per m².
21. The panel therefore did not consider the units in Canterbury to be comparable due to the distance and the differences between the two parks therefore lesser weight was placed upon this evidence. It considered that the units in Maybrook Retail Park would have a higher rental level as illustrated by the rents themselves.
22. Whilst the rental evidence upon the appeal hereditament and its neighbouring units was from 2012 and 2017 it did provide an indication of levels of values around the AVD in that they would have been between £122 per m² and £147 per m². The panel therefore considered that £130 per m² would be reasonable for the appeal hereditament at the AVD based on the rents passing.
23. The panel noted that there had been no challenges on the remaining units but did not agree that this meant that the price per m² had been fully established.

24. The panel had been persuaded by the appellant's representative that £130 per m² should be applied and confirmed the RV requested by Mr Watson of £85,250 with effect from 29 June 2018. The appeal is therefore allowed.

Valuation

m ²	price per m ²	
563.31	£ 130.00	£ 73,230.30
187.29	£ 65.00	£ 12,173.85
		£ 85,404.15
Say		£85,250

Order

25. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry to £85,250 with effect from 29 June 2018 within two weeks of the date of this order.

Refund of appeal fee

26. As the ground of the appeal has been made out, the appeal fee is to be refunded in full. This will take approximately six weeks to process.

Date: Monday 2 October 2023

Appeal number: CHG100744951

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.