THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; Local Government Finance Act 1988; 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: 653 Midsummer Boulevard, Central Milton Keynes, Milton Keynes MK9 3BQ (the "appeal hereditament")

APPEAL NUMBER: CHG100748787

BETWEEN:	Jennings Racing Limited	Appellant
	and	
	Dawn Bunyan (Valuation Officer)	Respondent

PANEL:	Mr I Lonsdale (Presiding Senior Member) Dr P Thomson (Senior Member)
CLERK:	Ms N Shepherd IRRV Hons
REMOTE HEARING 1:	Tuesday 17 October 2023
APPEARANCES:	Mr N Brewitt, of Altus Group on behalf of the Appellant Mrs J Alexander, on behalf of the Respondent

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Summary of decision

1. Appeal dismissed. The rateable value (RV) of £48,750 was confirmed from 1 April 2017.

Introduction

2. This is a 2017 rating list appeal brought in respect of the appeal hereditament, which had been entered into the rating list as 'Shop and Premises' at £48,750 RV with effect from 1 April 2017, based on a zone A rate of £1000/m^2.

3. The challenge proposal, submitted by Altus Group on behalf of Jennings Racing Ltd, was received by the Valuation Officer on 19 November 2021. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was wrong. A revised assessment of £25,000 RV was proposed with effect from 1 April 2017, based on a zone A rate of £513.30/m^2.

4. The Valuation Officer issued a challenge case decision notice on 3 November 2022, which stated that based upon the evidence and information available, the existing rating list entry was considered to be reasonable, and no amendment would be made.

5. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal had been made on the grounds that the rating list was inaccurate. The appeal was received by the Tribunal on 22 February 2023.

6. As Mr Brewitt appeared on behalf of the appellant as both advocate and expert witness and in view of the Upper Tribunal's judgment in Gardiner & Theobald LLP v David Jackson (VO) [2018] UKUT 0253 (LC), Mr Brewitt confirmed that he was aware that in giving his evidence his duty was to the Tribunal and that he would comply with this as well as the requirements of his professional body. Furthermore, he confirmed that he was not instructed under a conditional fee arrangement or any other success related fee.

7. In order to assist the tribunal, the parties had agreed all basic facts and the analysis of the competing rental evidence.

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 for the panel to determine was the RV for the appeal hereditament from 1 April 2017.

Evidence and submissions

11. The evidence comprised all of the information and documents which had been disclosed and exchanged as part of the challenge process.

Decision and reasons

12. In accordance with paragraph 2(1) of Schedule 6 of the Local Government Finance Act 1988, the appeal property must be viewed vacant and to let and 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. The date of the hypothetical rent is 1 April 2015, the AVD for the 2017 rating list.

13. 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.

14. Both parties had referred to the leading judgment of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141, which set out six propositions to be followed when considering the weighting of evidence. The rent on the subject property was considered to be the correct starting point but, where available, rents on similar properties were also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.

15. Bearing these six propositions in mind, the panel acknowledged that the correct starting point in this appeal was the actual rent passing on the appeal property and consideration to how that rent compared to the statutory definition of rateable value.

16. The panel noted that there were two leases in respect of the appeal hereditament, one dated 21 August 2014 and one dated 17 November 2020. Mrs Alexander submitted that the lease dated 21 August 2014 was the best evidence. This was on full repair and insurance (FRI) terms for an amount of £49,000 per annum (pa), which analysed to £1002.04/m^2, which she contended supported the current assessment.

17. Mr Brewitt contended the later lease dated 17 November 2020 was better evidence and supported his proposed zone A rate of £513.30/m^2. This lease was for an amount of £27,000 with a six-month rent-free period at the onset, analysing to £24,300 pa, just under the proposed RV of £25,000. He contended that this lease demonstrated that the subject hereditament had been let for too high a figure in 2014. This was further supported by the fact that the tenants who had taken the lease on in 2014 had left part way through the lease.

18. The panel considered the points of both parties and had regard to the second proposition in *Lotus & Delta*. It found that the terms of the lease from 17 November 2020 were too far removed from the statutory definition of rateable value and therefore attached little weight to this evidence. However, it considered the lease from August 2014 to be more useful as this was less than a year prior to the AVD and had no adjustments.

19. The panel also addressed Mr Brewitt’ s contention regarding the rental amount from the 2014 lease being too high. It attached no weight to this as no evidence had been provided to support this argument, and therefore considered this to be an assumption made as opposed to fact.

20. The panel then considered the comparable evidence submitted. Mr Brewitt presented details of two properties located on Midsummer Arcade and two properties located on Crown Walk, which he contended were situated in a more prime location than the subject hereditament as they were within the

shopping centre. These properties all had a percentage decrease in RV ranging from 20.5% and 31% between the 2010 and 2017 lists as opposed to the appeal hereditament which had a 53% increase in RV from the 2010 list.

21. Mr Brewitt also made reference to 8 and 17 Sunset Walk which were also situated within the shopping centre and therefore had higher footfall. There had been no change in the RV for these properties between the 2010 and 2017 lists. Furthermore, the zone A rate for 8 and 17 Sunset Walk was £1,100/m^2, which Mr Brewitt contended further supported a far lower tone for the appeal hereditament, which was situated in a less prosperous position.

22. The panel disregarded Mr Brewitt's argument regarding the lack of increase in RV between the 2010 and 2017 rating lists for the nearby properties. This was because the AVD of these two rating lists were seven years apart and the panel accepted that the caselaw states that each rating list was separate and distinct and should stand upon its own evidence.

23. Mrs Alexander referred the panel to 571 Midsummers Boulevard, which had a lease commencing in July 2013 on an FRI basis of £40,000 pa analysing to £967.82/m^2. As this lease commenced nearly two years prior to the AVD, the panel attached little weight to it. However, the panel did note that this property also had an unadjusted rate of £1000/m^2, with no challenges having been received regarding this assessment. The panel considered that having regard to this and the fact that this property was also not situated inside the main shopping centre that it was good evidence in supporting the current tone of the appeal hereditament.

24. Having considered both parties' evidence and analysis, the panel concluded that the main space rate of £1000/m^2 was not excessive. It attached most weight to the 2014 lease of the subject hereditament. It considered this, in conjunction with tonal evidence in respect of 571 Midsummer Boulevard, supported that the existing assessment was reasonable, and the RV was confirmed at £48,750 from 1 April 2017.

25. In cases of this nature, it is for the appellant to demonstrate that the RV is unreasonable, and the panel found that in this case the appellant had not done so.

26. The appeal is therefore dismissed.

Date: 13 November 2023

Appeal Number: CHG100748787

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.