VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal; shop and premises; rateable value disputed; the comparable assessments demonstrated that the subject hereditament was not over assessed and that no allowance for quantum was applicable; the rateable value for the subject hereditament is confirmed as £56,000 effective from 1 April 2017.

APPEAL NUMBER: CHG100749571

RE: Boyes, Forest Road, New Ollerton, NG22 9PL
(the "subject hereditament")

BETWEEN:	W Boyes & Co Limited	Appellant
	and	
	Mr A R Ricketts (Valuation Officer)	Respondent

PANEL: Mr K Everett (Presiding Senior Member)
Mr A Asante (Panel Member)

CLERK: Mr P Hill IRRV Tech

HEARING: Remote hearing 2 on 16 August 2023

APPEARANCES: Mr S Hill of Gerald Eve LLP for the Appellant
Mr J Wright of Valuation Office Agency for the Respondent

Summary of Decision

1. The appeal is dismissed.

2. The panel is satisfied that the rateable value shown in the 2017 non-domestic rating list for the subject hereditament is reasonable; and confirm that the rateable value is £56,000 effective 1 April 2017.

Introduction

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

4. This appeal has been brought pursuant to Regulation 13A of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 [SI 2009 No 2268]. The appeal challenges the respondent's decision that the appellant's proposal (also known as a "challenge" under the "check, challenge, appeal" framework) was not well-founded. The proposal was submitted on 23 November 2021. The appeal to this Tribunal was made on 9 March 2023, following the Valuation Office's Decision Notice. Within the proposal decision, the Valuation Officer reduced the appeal property's assessment from £62,000 rateable value to £56,000, with effect from 1 April 2017. The reduction reflected a reduced rate from £95m^2 to £85m^2.

5. The appellant's proposal had sought an alteration to the 2017 non-domestic rating list to a rateable value £47,000, with a unit value of 70m^2 from 1 April 2017.

6. Mr S Hill, a member of the Royal Institute of Chartered Surveyors, appeared on behalf of the appellant as expert witness and as advocate. He was not on a conditional or success related fee. In his declaration, Mr Hill stated that he understood and accepted that his duty was to the tribunal in giving his evidence, that he would comply with this duty, and the requirements of his professional body, regardless of whether or not the evidence supported the appellant's case.

7. Mr Wright, a member of the Royal Institute of Chartered Surveyors, appeared on behalf of the respondent as advocate and expert witness.

Relevant Law

The non-domestic rate

8. Part III of the Local Government Finance Act 1988 (the "Act") makes provision for the payment of a non-domestic rate in respect of non-domestic hereditaments in England. The rateable value of a non-domestic hereditament, which is used to determine the amount of the rate payable, is defined at paragraph 2(1) of Schedule 6 to the Act (which is commonly referred to as the "rating hypothesis").

9. For these proceedings, it is not necessary to set out all the provisions but suffice it to say that the rateable value of any hereditament is to be taken to be the amount, determined in accordance with the statutory assumptions, equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year, on 1 April 2015 (the "antecedent valuation date").

The material day

10. Matters affecting the physical state or enjoyment of the hereditament and the mode and category of occupation are, amongst other things, taken to be as they were on the "material day". The Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 [SI 1992 No 556] provides for determining the material day. So far as is relevant for these proceedings, Regulation 3 of those Regulations provides –

> ***3 Material day for list alterations***
>
> *(1) For the purposes of sub-paragraph (6) of paragraph 2 of Schedule 6 to the 1988 Act, the material day shall be determined in accordance with paragraphs (2) to (7) below.*
>
> *(2) Where the determination is with a view to making an alteration to correct an inaccuracy in the list on the day on which it was compiled, the material day is the day on which the list was compiled.*

Issue

11. The issue in dispute concerned whether the rateable of £56,000 was reasonable effective from 1 April 2017, the appellant argues comparable rents show the rateable value to be too high and the rateable value should include an allowance for quantum.

Decision and reasons

12. The parties' representatives took the panel through their respective submissions and evidence orally at the hearing. The panel carefully considered the parties' respective submissions, together with the legislative tests set out above. The panel was grateful to the parties' representatives for their submissions.

13. When assessing the rateable value (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, paragraph 2(7) of the1988 Act, in relation to both the physical nature of the property and its mode or category of use.

14. Where rental evidence is available, the weight to be attached should be considered in light of the following six propositions set down in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141, namely:

    a. Where the hereditament which is the subject of consideration is actually let, that rent should be taken as the starting point.

    b. The more closely the circumstances under which the rent agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of gross value in section 19(6) of the General Rate Act 1967 the more weight should be attached to it. (These statutory requirements are now contained in Schedule 6, Para 2 (1) Local Government Finance Act 1988 (as amended by the Rating (Valuation) Act 1999)).

    c. Where rents of similar properties are available, they too are to be properly looked at through the eye of the valuer in order to confirm or otherwise the level of value indicated by the actual rent of the subject property.

    d. Assessments of other comparable properties are relevant. When a valuation list is prepared these assessments are to be taken as indicating comparative values estimated by the valuation officer. In subsequent proceedings on that list therefore they can properly be referred to as giving an indication of that opinion.

    e. In light of all the evidence an opinion can then be formed of the value of the subject hereditament, the weight to be attached to the differing types of evidence depending on the one hand the nature of the actual rent and on the other hand, on the degree of comparability found in other properties.

f. In those cases where there are no rents available of comparable properties a review of other assessments may be helpful but, in each circumstance, it would be difficult to reject the evidence of the actual rent.

15. The subject property is a double fronted two storey retail unit, located in a parade of shops on Forest Road, New Ollerton with an internal main space measurement of 755.30m². The appeal property was built in 2013 and consists of a steel frame with external cladding. Internally the appeal property consists of a retail area with staff facilities on the first floor. The appeal property has full central heating and air conditioning to the retail sales area only. The appeal property also has CCTV and a rear yard with loading facilities.

16. The panel turned itself first to the rent on the subject hereditament, the first proposition within the *Lotus and Delta* judgment. The rent was set at £55,000 on 15 March 2013 for a term of 15 years with five yearly reviews, 25 months prior to the AVD of 1 April 2015. The rent was reviewed 2018 and remained the same at £55,000. *Lotus and Delta* sets that the starting point should be the rent on the subject hereditament. The panel notes the lack of rental growth between the two rent reviews. In terms of the assessment for the 2017 list, the panel placed greater weight on the rent effective from 15 March 2013, as it was set closer to the AVD.

17. There is no dispute over the areas adopted or the relativities used in respect of different areas, it is disputed that an allowance for quantum should be included.

18. In response to the proposal the valuation officer submitted a new rateable value of £56,000 effective from 1 April 2017, calculated on a base rate of £85m². The valuation officer contends that the rent already factors in an allowance for quantum, therefore no further allowances have been provided for this.

19. From the comparable properties submitted the panel focused predominantly on one of them. When looking at the comparables the panel need to consider the mode or category of occupation. The subject hereditament is listed as *'shop and premises'*. Of the comparables provided only two were measured using the 'internal main space', those being Heron Frozen Foods and Spar. The panel did not consider Spar a useful comparable as it is significantly smaller than the appeal hereditament measuring only 307.40m². The remaining comparables provided by the appellant were all measured on an internal zoned measurement, the panel did not consider these to be applicable and any points raised in respect of quantum did not apply as the valuation/measurement methodology is not the same, so cannot be comparable to the appeal hereditament. The panel therefore considered Heron Frozen Foods to be the most useful comparable property.

20. Heron Frozen Foods is a *‘shop and premises´* with an internal main space area of 406.17m², it is accepted this is still significantly smaller than the appeal hereditament but represented the best comparable. Heron Frozen Foods is located about 5 shops, estimated to be 50 metres from the appeal hereditament. The appellant’s representative argued that given the size difference quantum applied and this was also demonstrated by the devaluing in the rent of Heron foods at the lease renewal. The appellant’s representative argued the lease renewal on the appeal hereditament which happened two months later than Heron Foods had a differential of 8.2% between the two. The appellant’s representative contends this is down to quantum. The respondent’s representative contended that quantum is already factored into the passing rent, and to apply quantum would take the rateable value below the passing rent. The respondent’s representative further highlighted *Lotus v Delta* and the starting point should the passing rent.

21. After careful consideration, the panel concluded that there was insufficient evidence to justify allowing a quantum allowance. The panel concluded although Heron Frozen Foods represented the best comparable, it was still inherently different to the appeal hereditament in terms of its age and size. The panel concluded that appeal hereditament was a more modern property and the passing rent also factored quantum, this was further supported by the rent review not increasing the passing rent. The rateable value has been set close the passing rent and that the rateable value is not out of kilter with the passing rent. The panel therefore dismissed the appeal and confirmed the rateable value of £56,000 effective 1 April 2017 was not excessive.

Date: 15 September 2023

Appeal number: CHG100749571

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.