VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List appeal: shop and premises; Lotus & Delta Ltd v Culverwell (LO) and Leicester City Council [1976]; rental evidence; assessments of comparable properties; zone A rate in dispute; allowance requested for masking of property; appeal dismissed

APPEAL NUMBER:	CHG100753988	
RE:	Betfred,108 Linthorpe Road, MiddlesbroughTS1 2JZ (the “subject property”)	
BETWEEN:	Done Brothers (Cash Betting) Ltd	Appellant
	and	
	Amanda Hitching BA(Hons) MRICS (Valuation Officer)	Respondent
SITTING:	*remotely using Microsoft Teams*	
ON:	Wednesday 22 May 2024	
BEFORE:	Mrs L Bryning, Presiding Senior Member Mrs V Hollender, Member	
CLERK:	Mr R Patel IRRV(Hons)	
APPEARANCES:	Mr J Hart of Hart Commercial Surveyors Ltd, on behalf of the appellant as advocate and expert witness Mr A Baird, on behalf of the respondent as advocate and expert witness	

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The Tribunal panel determined the assessment of the subject property remain at £34,750 rateable value (RV), with effect from 1 April 2017.

Introduction

3. This was a 2017 Rating List appeal. The subject property had been entered into the 2017 list as “betting shop and premises” at a RV of £34,750, with effect from 1 April 2017. It was valued on the zoned basis at a zone A rate of £460/m^2.

4. The challenge proposal was submitted by Hart Commercial Surveyors Ltd on behalf of the appellant and was received by the Valuation Officer on 3 December 2021. It had been made on the grounds that the £34,750 RV shown in the rating list on 1 April 2017 was excessive, with a reduced RV of £17,500 sought.

5. The Valuation Officer issued a challenge case decision notice on 20 December 2022, which stated that based upon the evidence and information available, the rating list entry is reasonable and the RV would remain at £34,750.

6. 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 13 April 2023 with the appellant’s representative proposing an assessment for the subject property of £17,500 RV, with effect from 1 April 2017.

7. As Mr Hart was appearing as 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). Mr Hart declared that he was instructed on a standard fee basis, and he was not instructed under any conditional or other success-based fee arrangement. He stated 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. This statement of reasons is not and does not purport to be a full verbatim record of the proceedings.

<u>*Background*</u>

9. The subject property is a betting shop and premises that forms part of a shopping centre built in the early 1970’s. It is located on the corner of the pedestrianised segment of Linthorpe Road, a main retail thoroughfare, with a return frontage onto Grange Road, on the edge of the town’s main shopping centre.

10. The neighbouring property at 106 Linthorpe Road is a bank, part of the frontage of which is stated to encroach across the front of the subject property by 2.28m resulting in a smaller limited frontage. It is also stated that there is a large pillar to the right of the entrance door providing a further disability to the subject property.

11. As at 1 April 2017 the hereditament consisted of retail space as well as office and staff room space situated on the ground floor, with the total area of the property of 139.29m^2. It is valued at a zone A at £460/m^2.

12. The appellant’s representative had argued that the current zone A rate adopted is excessive based on the passing rent on the subject property and sought a reduction to £250/m^2 which

together with a request for a 10% allowance for masking due to the lack of a full frontage from Linthorpe Road resulted in his proposed assessment of £17,500 RV with effect from 1 April 2017.

13. The Valuation Officer defended the present assessment of £34,750 RV with effect from 1 April 2017.

Relevant Law

14. The term ‘rateable value’ is defined in paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988 (as amended):

“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.

15. This is a compiled list appeal and therefore the material date is 1 April 2017.

Discussion

16. The panel had to determine the rateable value for the appeal property, which represented a rent that a hypothetical landlord and tenant would agree, as at the AVD, 1 April 2015. This date was used to ensure that every property was treated in a consistent way.

17. The panel was aware that the Lands Tribunal judgment in *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141 provided authoritative guidance on the weight to be attached to rental and assessment evidence. This case had established six propositions that gave clear guidance to be followed when assessing rateable value. Bearing these six propositions in mind, the panel acknowledged that the rent on the subject property, where available, was considered to be the correct starting point and consideration to how that rent compared to the statutory definition of rateable value. The rents on similar properties were also considered and assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.

18. Mr Hart referred to the rent passing on the subject property, which was a letting from 18 April 2013 for a term of 10 years with a 24 month rent free period, a rent review after 5 years, and break option at year 6. The passing rent was £30,000 per annum, which he had analysed at £223/m^2, suggesting this supported a reduced zone A rate of £250/m^2. Furthermore, he contends that an allowance of 10% should be made as a result of the masking of the subject property by the neighbouring property at 106 Linthorpe Road.

19. Mr Hart argued that, having regard to the authoritative guidance in *Lotus & Delta*, that the rent passing on the subject property was the best evidence and that this strongly supported his assertion that the current assessment was excessive. He added that Mr Baird had departed from the principle that the rental evidence in respect of the subject property was key.

20. With regard to the subject property, the panel placed little weight on it as it had been set two years prior to the AVD and it provided a large incentive of two years rent free. There was also discrepancy between the parties as to how the rent analysed. Furthermore, the panel noted that the rent passing of £30,000 was far in excess of the RV sought of £17,500.

21. As such, in accordance with the propositions set out in *Lotus and Delta*, the panel went on to the third proposition and considered rents set on comparable properties in the locality.

22. Mr Hart had not provided any rents of comparable properties. In terms of indirect rental evidence, Mr Baird had referred to the rents passing on two other properties, listed as ‘shop and premises’ in Linthorpe Road, as set out on the table below, which the panel found to be persuasive :

Address	**RV**	**Area (m^2)**	**Rent**	**Effective Date**	**Analysed rent**	**Zone A (m^2)**
47 Linthorpe Road	£38,500	163.19	£52,500	26/02/2015	£529.04	£560.00
71-73 Linthorpe Road	£63,000	297.90	£80,000	17/06/2013	£583.44	£580.00

23. In considering the above, the panel found that the rents of these comparable properties had analysed much higher than the that of the subject property, and both had zone A rates well in excess of £460/m^2 that was applied to the appeal property.

24. The panel appreciated that the rent passing on 71-73 Linthorpe Road had been set over two years prior to the AVD. However, the panel found the rent on 47 Linthorpe Road particularly helpful. This being a rent set just over a month prior to the AVD on a shop in close proximity to the appeal property. The rent analysed to £529.04/m^2 and did not suggest to the panel that the current zone A rate applied of £460/m^2 was excessive.

25. Mr Hart argued that rental values decreased on Linthorpe Road in respect of properties that moved closer to Grange Road, with the two aforementioned comparable properties situated in more favourable positions. The panel accepted that there was a decline in the zone A rates along Linthorpe Road and this was evidenced in the lower zone A rate applied to the appeal property of £460/m^2, with the rates rising to £580/m^2 the further one went up Linthorpe Road. The panel found that the subject property’s locality had been adequately reflected in the lower zone A rate applied.

26. Additionally, Mr Hart drew the panel’s attention to 91-93 Linthorpe Road, which had been marketed in March 2015 at an annual rent of £45,000. He stated that before any rent free period this would devalue to £360/m^2 and based on the incentive of a two year rent free period this would equate to a zone A rate of £250/m^2. The panel did not attach much weight to this evidence as it was marketing information rather than that of an achieved rent. Furthermore, the marketing of this property was in respect of a property consisting of basement, ground, first and second floor areas, previously used as a department store, in

comparison to the subject property being one where the rent passing was in respect of the ground floor.

27. Turning to the appellant's request for a 10% allowance for masking, the panel found this request unsupported in evidence. The panel noted the appeal property had not physically altered since the 2010 Rating List when the subject property's assessment had been discussed with Mr Hart and no allowance had been granted for masking. Furthermore, the panel noted that the subject property benefitted from a corner position. However, this factor was not reflected with an addition for a return frontage.

27 The burden of proof is on the appellant to persuade the panel that the assessment was excessive. On the evidence before it, the panel found that the current zone A rate of £460/m^2 was fair and reasonable and that no evidence had been presented to demonstrate that a 10% allowance for masking was warranted. I

Disposal

28. In view of the above findings and conclusions, the panel was satisfied that the subject property was correctly entered into the 2017 Rating List from 1 April 2017 at a Rateable Value of £34,750, and therefore the appeal was dismissed.

Date issued to parties: 21 June 2024

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.
