THE VALUATION TRIBUNAL FOR ENGLAND

2017 rating list appeal; retail warehouse and premises; tone of the rating list; comparable properties; rental evidence; appeal dismissed

RE: SCS, Victoria Road, Stoke-on-Trent, ST4 2TE ("the subject property")

APPEAL NUMBER: CHG100757625

BETWEEN:	A Share and Sons Ltd Trading as SCS	Appellant
	and	
	Dal S Virk (Valuation Officer)	Respondent

PANEL: Mr C Aggrey (Senior Member)
Mr M Bhatti

CLERK: Mrs A Sloan

HEARING: Remote hearing No.3 on 20 January 2023

APPEARANCES: Mr D Bullimore of Lambert Smith Hampton (for the Appellant)
Mr J Fox (Respondent's representative)

Summary of decision

1. Appeal dismissed. The panel made no change to the existing entry in the rating list at £99,000 RV with effect from 1 April 2017.

Introduction

2. The subject property is a retail warehouse with a ground floor sales area and an additional supported floor area. This appeal was lodged on 24 June 2022 to challenge the Valuation Officer's (VO) decision notice of 28 February 2022, which stated that the challenge was well founded and the RV in the list at £103,000 with effect from 1 April 2017 was reduced to £99,000 from the same date. The appellant's representative considered this valuation to be excessive and sought a reduction to £66,500, based on the rent agreed on the subject property.

3. Mr Bullimore was acting in a dual role as both advocate and expert witness for the appellant. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson* (VO) [2018] UKUT 0253 (LC), he declared that he was instructed under a success related fee arrangement. In giving expert evidence, he 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 his client's case.

4. The panel accepted this expert witness evidence on the above basis as the appeal is not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and is 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). It was therefore appropriate for the panel to consider the 'expert' evidence and assess what weight, if any, to give it in the context of the matters in issue before it.

5. Mr Fox stated he was also acting as both advocate and expert witness for this case.

6. This tribunal decision document is not and does not purport to be a verbatim record of proceedings. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

Preliminary issue

7. Mr Fox sought to introduce settlement evidence that was not available during the challenge discussions or when the decision under appeal was issued. The valuation concerned the Halfords building in Victoria Road, Stoke-on-Trent, which was agreed with the ratepayer's agent on 16 December 2022. Mr Fox shared the details of this settlement with the Tribunal and Mr Bullimore on 16 January 2023.

8. Mr Bullimore confirmed at the hearing that he had no objection to the inclusion of this settlement evidence, and he would comment on it during his presentation. The panel therefore admitted the details on the Halford's assessment into evidence.

Issue

9. The issue before the panel was the accuracy of the entry shown in the rating list. The facts and floor areas of the subject property were agreed.

Evidence and submissions

10. Mr Bullimore placed most weight on the rent agreed on the subject property. The appellant company agreed a 10-year lease from March 2015 at £95,000 per annum. There was a 27-month rent free period and a rent review at year five. On the basis of this rent, he contended for a valuation of the ground floor retail space at £53.50/m^2 with the mezzanine floor valued at £20/m^2, resulting in a revised RV of £66,500.

11. Mr Fox defended the existing valuation at £99,000 RV, which was based on £80/m^2 for the main space (reduced from £85/m^2) and £30/m^2 for the mezzanine. He contended that the valuation was reasonable and was supported by the recent settlement on the adjacent Halford's building.

Decision and reasons

12. The term 'rateable value' is defined in paragraph 2(1), 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".

13. 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. The material day (the date by which physical factors have to be taken into account) was 1 April 2017, when the current entry was made in the rating list.

14. The panel was aware of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141. This Lands Tribunal judgment provided authoritative guidance on the weight to be attached to rental and assessment 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. The parties had differing approaches to the analysis of the rent passing on the subject property. The rent was agreed as renewal of an existing lease at £95,000 after the extensive rent-free period. Mr Bullimore had analysed the rent to the five-year review, which equated to £53.50/m^2. Mr Fox contended that the rent should be analysed over the full 10-year term. He argued that the rent-free period would be considered an incentive to take the lease for 10 years and, as there was no break clause, the appellant company as tenant could not walk away without compensating the landlord. Mr Fox was of the opinion that, as the rent could not be reduced at the review point and a substantial rent-free period had been agreed to incentivise the 10-year lease, it was unlikely the rent would increase during the full term.

16. Mr Bullimore referred to the Upper Tribunal decision *Lamb v Go Outdoors Ltd* [2015] RA/66/2013, although this was not included in the evidence bundle, and argued that this case established that analysis to the first review was normal.

17. Mr Fox provided the panel with details on other retail warehouse assessments in Victoria Road.

Address	Area	Rent	Effective date of rent	Analysed rent	Adopted value
SCS	976.30m^2	£95,000	25/3/2015	£69.80	£80.00*
Halfords	698.10m^2	£98,600	25/3/2015	£109.35	£92.00#
Poundstretcher	3287.60m^2	£280,000	3/1/2012	£70.00	£75.00
Unit 3B Ravensridge Retail Park	453.56m^2	£42,708	29/6/2012	£94.16	£92.00
EuroCarpets	925.90m^2	£100,480	1/10/2012	£87.13	£92.00

*Subject property after challenge decision
#Prior to December 2022 settlement, now £85/m^2

18. Halfords is located adjacent to the subject property and the panel understood they share a car park. Mr Bullimore contended that the subject property was less desirable because Halfords was located closer to the car park entrance and SCS customers would need to pass through the car park past Halfords to reach its entrance. Mr Bullimore also highlighted that the subject property has planning consent for retail use only, whereas Halfords has both retail and B2 use as it also operates as an Autocentre. He considered there is a greater market for this more flexible use.

19. The panel noted that the rents on the other three properties were further from the AVD, in 2012, and Poundstretcher and Unit 3B were very different to the subject property in size. EuroCarpets is closest in size to the subject property and its valuation, based on £92/m^2, suggested the subject property's valuation at £80/m^2 was not unreasonable.

20. Mr Bullimore had contended that the mezzanine floor at the subject property was weight restricted, unlike the mezzanine in the Halfords property. However, no evidence of this had been supplied. Mr Fox confirmed that the VO had inspected both properties and found the subject property's mezzanine to be of a better quality than that in the Halfords building. According to the VO's records the mezzanine at Halfords had steel staircases, boarded floors and was open to the roof. It was used mainly for storage and was valued at £20/m^2. In contrast, the subject property's mezzanine was an extension of the sales area, with glass balustrades and used for furniture display, hence its value at £30/m^2.

21. Also provided by Mr Bullimore were details of rents on other properties in Stoke on Trent, but these were in a different location to the subject property, in Etruria Road. The VO's submission stated that these properties are located on a major retail park at the outskirts of the city centre, around two miles from the subject property. The table of rental evidence provided by Mr Bullimore did not include details of the size or age of those properties for comparison with the subject property. The panel concluded they were in a different location and did not carry as much weight as retail warehouses in the same location as the subject property.

22. Although the subject property's rent was agreed close to the AVD, the panel found that the rent-free period was unusually long, and the rent required adjustment. As the rent-free period was far in excess of the usual, the panel found that it was not unreasonable to analyse it over the full term. It agreed with Mr Fox's position that it was unlikely the rent would increase at review. The panel did not consider the subject property's rent to be conclusive in this case.

23. After considering all the evidence presented, the panel found that the basket of rental evidence from the same retail site as the subject property supported the existing valuation. The closest property in size to the subject property was EuroCarpets and this was valued at £92/m^2. This suggested the subject property's valuation at £80/m^2 was not excessive. Halfords is adjacent to the subject property and also has a mezzanine level. Although smaller, the panel found that the recent settlement on this property at £85/m^2 supported the value applied to the subject property.

24. The burden of proof in this appeal rested with Mr Bullimore to satisfy the panel that the existing valuation was excessive. The panel was not persuaded on the available evidence that this was the case and it found that the current RV at £99,000 was reasonable. The appeal was therefore dismissed.

Date: 3 February 2023 **Appeal number:** CHG100757625

Appeal Rights

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.