THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 list appeal; Shop and Premises; Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council 1976; appeal allowed in part.

Re: Unit G8, Union Gallery, Broadmead, Bristol BS1 3XD

APPEAL NUMBER: CHG100757787

BETWEEN:	Wed2B Limited	Appellant
	and	
	D Virk	Respondent
	(Valuation Officer)	

PANEL: Miss K Riddy (Presiding Senior Member)
Mr D Gardner (Senior Member)

CLERK: Mrs C McAvoy

REMOTE HEARING No.1 on 24 March 2023

APPEARANCES:

Ms Katy Cooper Altus Group on behalf of the appellant as both advocate and expert witness
Ms Amelia Day on behalf of the respondent Valuation Officer as both advocate and expert witness

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Summary of decision

1. Appeal allowed in part; the appeal property's assessment was reduced from £100 per m^2 to £80 per m^2.

Introduction

2. Unit G8, Union Gallery, Broadmead, Bristol BS1 3XD was entered in the 2017 Rating List at £57,000 rateable value (RV), effective from 1 April 2017. The appeal arises from a challenge submitted on 13 December 2021 in which Altus group, on behalf of the appellant, proposed a reduced RV of £16,500. After considering the proposal and evidence submitted during the challenge period, the Valuation Officer decided that the proposal was not well founded

and refused to alter the existing assessment of £57,000 RV. A challenge decision notice to that effect was served on the appellant on 29 April 2022. Under Regulation 13A of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009, the Valuation Officer's decision was appealed to this tribunal on the grounds that the current valuation for the hereditament was not reasonable.

3. Prior to the hearing, Ms Cooper provided a revised valuation which proposed a reduction to £33,250 RV. This was sent to the Tribunal and to the respondent.

4. The appeal property was shown in the list as 'Shop and Premises' and valued on an overall basis. The unit is situated on the first floor of The Galleries Shopping Centre. The Galleries is set over three floors within Broadmead, Bristol City Centre which has a carpark attached providing easy access to Broadmead.

5. Both parties appeared before the panel in a dual capacity as both Advocate and Expert Witness. Ms Day was not instructed under a fee but accepted that when giving evidence as expert witness her overriding duty is to the Tribunal. Ms Cooper declared that she was appointed on a contingency fee basis, she did, however, accept that first her duty was to the Tribunal and that she would comply with this duty together with the requirements of her professional body, regardless of whether or not the evidence supported the Appellant's case. Whilst such evidence would be inadmissible in the Upper Tribunal, having regard to the Upper Tribunal's judgment in *Gardiner & Theobald LLP v Jackson (VO)* [2018] UKUT 0253 (LC) 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 in England). The panel, therefore, considered the "expert" evidence and attached such weight to it as it saw fit.

6. This hearing was held remotely via Microsoft Teams.

7. This document is not and does not purport to be a full verbatim record of proceedings.

Issue

8. The issue between the parties concerned the RV of the appeal property and, specifically, the rate per m² that should apply. Ms Cooper, for the appellant, sought a reduced entry of £33,250 RV based on a tone of value of £55 per m². On behalf of the respondent, Ms Day defended the Valuation Officer's existing assessment of £57,000 based on a tone of value of £100 per m².

Evidence and submissions

9. The evidence bundles before the panel comprised all the evidence disclosed and exchanged during the challenge process which included rental evidence and tonal evidence being relied on, photographs, and the parties' respective cases.

Decision and reasons

10. The antecedent valuation date (AVD) for 2017 list rating appeals is 1 April 2015. As this appeal concerned a challenge to the compiled list entry, in accordance with Non-Domestic Rating (Material Day for List Alterations) Regulations 1992, the material day was 1 April 2017.

11. In considering this appeal, the panel had regard to the term 'rateable value' as defined in paragraph 2(1), Schedule 6 to the Local Government Finance Act 1988 (as amended) and to the authoritative guidance in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA141.

12. The rent payable on this unit is £1 per annum, the appellant has a deal with the landlord whereby they pay for the service charge and business rates. The original agreement began on 14 March 2016 and was for a ten-year term with a five-year break. The client exercised the break and re-negotiated another five-year term with a two-year break, the rent payable remaining at £1 per annum.

13. It was Ms Day's contention was that this was likely agreed as a way for the landlord to mitigate rates liability and the rent was at odds with the rating hypothesis as there was little prospect of continuance and therefore is not likely to reflect the open market value, particularly when other rents had been agreed within the shopping centre. Ms Cooper submitted that such terms were not unusual in the current market conditions, that it was agreed close to the AVD, was a new lease for a 10-year term and considered that this rent should not be disregarded.

14. The panel placed little weight to the respondent's contention that the evidential weight should be low given that a peppercorn rent was agreed outside of the Landlord and Tenant Act 1954. It was agreed for a term of ten years and in accordance with the rateable value definition, it is the estimated rent which a hereditament might reasonably be expected to let for from year to year. Whilst there should be a reasonable prospect of continuance, this was agreed for ten years in 2016. Furthermore, there was uncertainty as to whether the neighbouring property's lease was also outside of the Landlord and Tenant Act.

15. The panel also found that it could not ignore that there were empty units within the Galleries which reflected the current market and found that this could impact rental negotiations. It referred to Ms Cooper's submission that retail had been in decline since the construction of the more modern shopping centre, Cabot Circus, which completed in 2011. Currently the centre is occupied by low turnover / high margin stores along with a few independent and local retailers. This was supported by the empty units, for example on the

ground floor alone there are several empty units, being BG14, BG5, BG28, BG29, and BG9.

16. The panel therefore found that it was not unreasonable that the rent would be agreed under such terms considering the empty units within the Galleries. However, it was mindful that some rents were agreed which demonstrated some demand, albeit limited. Therefore, it concluded that it could not disregard the rent, but as per *Lotus & Delta v Culverwell* the subject rent is the starting point and the panel considered that the correct approach was to view this rent in conjunction with the basket of evidence brought before it.

17. The appeal property had been split from a larger unit known as unit G8-11 with effect from 26 February 2016. The split created two hereditaments, unit G8 (the appeal property) and unit G11 (known as Slaters Menswear). Slaters Menswear was a new lease agreed with an effective rent date of 1 February 2016. The rent was analysed to £83.41 per m^2, and the assessment was settled at £100 per m^2 with a 15% end allowance applied for access and layout. This property was accessed via Union Street only, whereas the appeal property only had access via the Galleries.

18. Two lease renewals were also provided for Waterstones at unit G11A and Argos at units 55A and 55B. The rent on Waterstones was agreed from 1 June 2016 and the respondent had analysed this to £101.87 per m^2, whereas the appellant had analysed it to £95.05 per m^2. The renewal for Argos was agreed on 21 September 2018 and the appellant had analysed the rent to £80.01 per m^2. Both were assessed at £100 per m^2. They were not new leases, and both are established businesses renewing the rent, so the panel found that this was not reflective of the economic factors for new leases within this centre as at the AVD.

19. The panel found that the evidence did support that the units with access from Union Street were more valuable. The Zone A price for shops on the ground floor of the Galleries was circa £600 per m^2, whereas those on the first and second floor have a Zone A rate of circa £270 per m^2. The shops on Union Street have a Zone A rate of £600-£800 per m^2. Waterstones was situated on the first floor, but the panel had regard to the fact that it was twice the size of the appeal property and benefitted from two entrances, one from the street and one inside the Galleries. The appeal property did not benefit from an additional entrance on Union Street, having only one entrance on the first floor of the Galleries. The first floor does not have public access from the street to the centre and can only be accessed via the other floors or through Waterstones, which would require local knowledge. The panel considered this to be a disadvantage to the appeal property and therefore it did support that it should not be valued the same as Waterstones.

20. Argos was also in a more advantageous position compared to the appeal property as it was on the second floor which has two public accessways. The £100 per m^2 adopted supported that the appeal property was excessively valued.

21. Ms Cooper referred to Unit BG16A, Broadmead Gallery, Broadmead, Bristol, BS1 3XB which had been agreed at £55 per m^2. Compared to the appeal property, the unit is a similar corner unit of similar size. This unit is on the ground floor, which is more advantageous than the appeal property's position on the first floor as supported by the access and Zone A prices. The panel had regard to the fact that this was valued as a 'Soft Play Centre and Premises' which would not be reflective of the rental bid for a 'Shop and Premises'. However, the panel found that this assessment supported that there are units valued on an overall basis for less than £100 per m^2.

22. In conclusion, the panel having found that there was evidence of higher value for properties with access to Union Street and that it had to consider that the first floor does not have direct public access to the Galleries, although it accepted that there could be footfall due to the toilets and food court being situated on this level. Having regard to the situation, the economic factors, and the peppercorn rent agreed, the panel found it was persuaded that the £100 per m^2 was not reasonable. However, it did not find the proposed £55 per m^2 to be supported. It could not ignore the passing rent on the appeal property and considered that whilst Slaters Menswear had the benefit of the access to Union Street it had a lower assessment due to a 15% allowance and its rent had analysed to £83.41 per m^2. The panel therefore found a rate of £80 per m^2 to be reasonable.

23. In view of the foregoing the RV was reduced to £46,500 based on a reduce rate of £80 per m^2 and inclusive of the air conditioning at £7 per m^2 which was not in dispute. The appeal was therefore allowed in part.

Order

24. In accordance with Regulation 38 (4) and (9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Officer is ordered to alter the list entry for the appeal property to £46,500 RV with effect from 1 April 2017. The Valuation Officer must comply with this Order within 2 weeks of its making.

Refund of appeal fee

25. A refund of the paid fee will now be arranged (Regulation 13E of the NDR Alteration of Lists & Appeals Regs) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

Date: 3 April 2023
Appeal number: CHG100757787

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.