THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeals; 2017 rating list; challenge against compiled list entry; surgery and premises; accuracy of rateable value; comparable assessments; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; RF Williams (Valuation Officer) v Scottish & Newcastle Retail Ltd Allied Domecq Retailing Ltd [2001] EWCA Civ 185; *appeals dismissed.*

RE: Grd Floor, 14/15 New College Parade, Finchley Road, London NW3 5ES

APPEAL NUMBERS: CHG100763125 and CHG100763100

BETWEEN: Bright Smile Clinic Ltd — Appellant

And

Mr A Ricketts (Valuation Officer) — Respondent

PANEL: Ms R Sharma (Presiding Senior Member)
Dr E Stuart-Cole (Senior Member)

CLERK: Miss F Willson

REMOTE HEARING ON: 18 August 2023

APPEARANCES: Mr A Marshall for Conneely Tribe (on behalf of the appellant)
Mr W Mak (on behalf of the Valuation Officer).

Summary of decision

1. Appeal dismissed. The rateable value (RV) of £40,750 with effect from 1 April 2017 and £37,000 with effect from 18 October 2018 in connection with Grd Floor, 14/15 New College Parade, Finchley Road, London NW3 5ES (the subject property) is confirmed.

Introduction

2. These are 2017 rating list appeals in respect of the subject property which arise from challenges made by the appellant's representative on 7 January 2022. The challenges were in respect of the entries in the rating list at £40,750 RV as 'shop and premises' effective from 1 April 2017 and £37,000 RV as 'surgery and premises' with effect from 18 October 2018. The appellant sought revised assessments of £31,000 RV with effect from 1 April 2017 and also with effect from 18 October 2018 based on a rate of £450/m^2 (later revised to an RV of £29,000 based on a rate of £382.50/m^2). After considering the merits of the challenge, the Valuation Officer (VO) determined that it was not well founded and decision notices to this effect were issued on 28 April 2022.

3. Mr Marshall appeared on behalf of the appellant as both advocate and expert witness. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Marshall stated that he was instructed under a conditional fee arrangement. 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 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). The panel therefore considered the expert evidence and attached such weight to it as it saw fit.

5. The subject property comprises a dental surgery and premises located in New College Parade of shops on Finchley Road, London. The subject property forms part of a six-storey traditional block with living accommodation on the upper floors. The parade also includes shops and a restaurant and is a short walk from Finchley Road and Swiss Cottage train stations.

6. These appeals originally came before the Tribunal on 1 August 2023 when Mr Mak sought to produce the Supreme Court case of *RF Williams (Valuation Officer) v Scottish & Newcastle Retail Ltd Allied Domecq Retailing Ltd* [2001] EWCA Civ 185 before the panel. The panel on that occasion found that it was in the interests of justice to allow Mr Marshall time to read through and consider the case before proceeding with the hearing.

7. During the hearing it became apparent that the 'Statement of Case' from the appellant's representative had not been included in the bundle sent to the Tribunal. A copy of the document was sent to Mr Mak and he read it and confirmed that he had seen it before and was content for it to be included in the evidence. On that basis the panel allowed the document to be included in the evidence and the hearing continued.

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 subject property had been valued by the zoning method, based on a zone A rate of £525/m^2, which the VO considered to be reasonable. The appellant's representative

submitted two valuations. One was based upon a reduced zone A rate of £450/m^2 which gave a revised assessment of £29,250 RV and the other was calculated using a base rate of £382.50/m^2 derived from the rental and assessment evidence of other dental surgeries which resulted in £29,000 RV. It was the valuation at £29,000 RV that the appellant's representative was seeking confirmation of.

Evidence and submissions

11. The evidence bundle before the panel comprised all of the evidence disclosed and exchanged during challenge which included rental evidence and its analysis, the parties' skeleton arguments, expert witness statements, photographs of the subject property and a copy of *RF Williams (Valuation Officer) v Scottish & Newcastle Retail Ltd Allied Domecq Retailing Ltd*.

12. The appellant's representative submitted that the appeal should be allowed, and the RV on the subject property should be reduced to £29,000 based on a rate of £382.50/m^2.

13. Mr Mak requested that the tribunal dismiss the appeal and confirm the RV of £40,750 with effect from 1 April 2017 and £37,000 with effect from 18 October 2018.

Decision and reasons

14. The appeal hereditament must be 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 (see paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015 (antecedent valuation date or AVD). Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 (material day) for this appeal. When assessing the 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 of paragraph 2(7) to the Act, in relation to both the physical nature of the property and its mode or category of use.

15. The panel had regard to the Lands Tribunal judgment of *Lotus and Delta v Culverwell (VO) & Leicester City Council* [1976] RA 141, as referred to by both parties. This case had established six propositions, which gave authoritative guidance on the weight to be attached to rental and assessment evidence, namely:

(1) 'Where the hereditament which is the subject of consideration is actually let that rent should be taken as the starting point.

(2) The more closely the circumstances under which the rent is agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of Gross Value in s.19(6) of the General Rate Act 1967 the more weight should be attached to it.

(3) 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.

(4) 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 VO. In subsequent proceedings on that list therefore they can properly be referred to as giving an indication of that opinion.

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

(6) In those cases where there are no rents available of comparable properties a review of other assessments may be helpful but, in such circumstances, it would be clearly more difficult to reject the evidence of the actual rent.'

16. Mr Marshall drew the panel's attention to the fact that the mode and category of occupation had been 'shop and premises' from 1 April 2017 and 'surgery and premises' from 18 October 2018, therefore the RV should be based upon comparison with other dental surgeries and not shops. He submitted that the closest comparable properties which were dental surgeries within the vicinity of the subject property were Bst and Gnd Flr 200 Finchley Road, Gnd Flr Right at 321 Finchley Road, Gnd Flr 300 Finchley Road and Gnd Flr Pt 411 Finchley Road which had assessments based upon rates of between £262.50/m^2 and £382.50/m^2. It was the rental and assessment evidence of these properties that he had used to come to his base rate of £382.50/m^2 for the subject property. Although he did concede that only one of the comparable properties he had relied upon had been assessed using a base rate and the others had in fact been valued based on a zone A rate.

17. Mr Marshall drew the panel's attention to the fact that the comparable properties put forward by the VO were not dental surgeries but in fact shops. The subject premises had been reconfigured with internal walls erected to create treatment rooms which each had access to water and waste, a room specially created to allow for X-rays to be taken and a room for the compressed air machine required by dentists. None of these would be required by a shop. He argued that empty and to let the subject property would be a dental surgery and not a shop and so would only attract tenants who wanted a dental surgery.

18. Mr Mak on behalf of the VO submitted that the subject premises was in a parade of shops and that vacant and to let it should be assessed as a shop. He argued that the reconfiguration did not amount to major structural work and the property could easily be reinstated as a shop. On that basis he stated that his comparable properties were good comparators as they were in close proximity to the subject property, some within the same parade of shops. He included eight comparable properties which had rental details commencing from June 2012 to December 2016, which was close to the AVD, and which had a base rate of between £450/m^2 and £535/m^2 and supported that £535/m^2 was reasonable.

19. The panel was aware that the persuasive or legal burden of proof was on the appellant to prove his case on the balance of probabilities and the panel found that he had not discharged that burden. The panel found that it had been provided with evidence from the VO which suggested that the zone A rate applied to the subject property of £535/m^2 was reasonable.

20. The external photographs of the property depicted a traditional shop frontage. The photographs of its internal layout did not persuade the panel that there was anything done to the property to facilitate its use as a dental surgery that could not easily be undone with only minimal work by any tenant wishing to take the premises for retail use.

21. The panel found that when viewing the subject property vacant and to let, its inherent character and nature was that of a retail unit within a locality of other similar units. It was not unreasonable to assume that any hypothetical landlord looking to let the appeal property at the AVD, would expect to negotiate a rent with comparability to that achieved by other similar units in the locality.

22. The panel therefore dismissed the appeals and confirmed entries in the rating list at £40,750 RV as 'shop and premises' effective from 1 April 2017 and £37,000 RV as 'surgery and premises' with effect from 18 October 2018.

Date: 4 September 2023

Appeal numbers: CHG100763125 and CHG100763100

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.