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; subject rent; comparable properties; appeal dismissed.

Re: Unit 3a The Circus 116, Portland Street, Manchester M1 4RL

APPEAL NUMBER: CHG100772097

BETWEEN:	Boots UK Limited	Appellant
	and	
	Amanda Hitchings (Valuation Officer)	Respondent

PANEL: Mrs L Long (Presiding Senior Member)
Mr S Wood (Senior Member)

CLERK: Mrs C McAvoy

REMOTE HEARING No.2 on 28 February 2023

APPEARANCES:

Mr Kevin Lo of GL Hearn on behalf of the appellant as both advocate and expert witness
Mr Greg Willetts on behalf of the respondent Valuation Officer as both advocate and expert witness

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Summary of decision

1. Appeal dismissed; the panel made no change to the existing rateable value (RV) of Unit 3a The Circus 116, Portland Street, Manchester M1 4RL, (the 'appeal property').

Introduction

2. This appeal has been brought in respect of the following: Unit 3a The Circus 116, Portland Street, Manchester M1 4RL which was entered in the 2017 Rating List at £58,500 Rateable Value (RV), effective from 1 April 2017.

3. The challenge proposal was submitted by GL Hearn on behalf of the appellant and was received by the Valuation Officer on 3 February 2022.

4. In response to the proposal, the Valuation Officer's challenge decision reduced the RV to £55,500 with effect from 1 April 2017. This valuation is based on a rate of £575/m^2 in terms of zone A (ITZA).

5. Mr Lo, on behalf of the appellant, still disputed the revised Valuation Officer's valuation and made an appeal on the grounds that the RV was unreasonable. He proposed a RV of £49,000 with effect from 1 April 2017 based on a rate of £500/m^2 ITZA.

6. The appeal property is shown in the list as 'Shop and Premises'. It is situated on the corner of Portland Street and Oxford Street in Manchester city centre. It comprises ground floor retail with basement storage and has a full glass frontage.

7. Both Mr Lo and Mr Willetts appeared in a dual role of advocate and expert witness. Neither party was instructed on a contingency based fee and Mr Lo confirmed he was appointed on a fixed fee basis. Both declared that they understood and accepted that when giving evidence as expert witness, their duty was to the Tribunal.

8. This Tribunal decision document is not and does not purport to be a verbatim record of proceedings but the parties can be assured that all of the evidence presented was fully considered by the panel before coming to its decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

Issue

9. The issue between the parties concerned the RV of the appeal property and, specifically, the Zone A rate to be adopted.

Evidence and submissions

10. In advance of the hearing, the panel was provided with the evidence submissions exchanged during the challenge process. The evidence comprised the respondent interim challenge decision, photographs, maps, schedules of evidence, the challenge decision, and the appellant's representative's submission.

11. Mr Lo, on behalf of the appellant, submitted that the facts were agreed at check, however, it is his contention that the incorrect base rate has been used through the incorrect and selective analysis of rental evidence by the respondent.

12. He submitted that the appeal property is set back from the busier Oxford Street and is masked by the adjacent casino. It is isolated within a parade of occupiers comprising leisure and A3 users and unlike other parts of this

section of Oxford Street, it does not benefit from the normal shopper's footfall. He referred to the plan submitting that the appeal property is L shaped and discussed the typical footfall direction. Further, it was stated that there is a Wetherspoons adjacent with outdoor seating and this funnels pedestrians away to Oxford Steet.

13. He did not agree that great weight should be placed on the interim rent which was agreed some 14 months post the AVD and thus does not follow the rating hypothesis too closely. Further, it was argued that when valuing this section in Oxford Street, the respondent has placed more weight on the tone rather than rents except for the appeal property.

14. He referred to a schedule of comparable evidence which included properties on Oxford Street and Portland Street which had an unadopted rate of £500/m^2 to £550/m^2. He also referred the panel to a map which provided the tone adopted at various points of Oxford Street, submitting that shops located closer to St Peters Square were valued at £525/m^2 which arguably had more prominence and higher footfall due to the tram stop.

15. Having regard to the submission, Mr Lo's view was that the current RV was not reasonable, and he sought a reduced rate of £500/m^2, resulting in a reduced RV of £49,000 with effect from 1 April 2017.

16. Mr Willets, for the respondent, submitted that in accordance with the Lands Tribunal judgment of *Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council* 1976 the passing rent on the appeal property should be the starting point when determining a suitable RV. He provided details of the interim rent which was agreed at £55,000 in June 2016 which he had analysed to £571/m^2.

17. A rental summary was referred to which detailed new letting rents and rent reviews agreed between 10 September 2013 and 1 August 2016. They were analysed at £497.28/m^2 to £744.72/m^2, and the assessment values were £425 to £525/m^2.

18. It was the respondent's view that the appeal property is situated in a good position on the busy junction of Oxford Street and the rent agreed supported this. Further, it was submitted that the unit has traditionally been valued at the higher level of tone and this was accepted in the 2010 rating list by Gerald Eve who withdrew the proposal on behalf of the appellant.

19. Mr Willets considered that having regard to the evidence, the current assessment of £575/m^2 was fair and reasonable. He therefore sought dismissal of the appeal.

Decision and reasons

20. 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):

“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”.

21. 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.

22. In reaching its decision, the panel had regard to the Lands Tribunal judgment of *Lotus & Delta v Culverwell and Leicester City Council (*LVC/376/1975). This case had established six propositions, which gave clear guidance to be followed when assessing rateable value, 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 Valuation Officer. 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.'

23. Bearing these six propositions in mind, the panel acknowledged that the starting point in this appeal was the actual rent passing on the appeal property. The rental information provided for the appeal property was that an interim rent was agreed in in June 2016. It was agreed at £55,0000 which the respondent had analysed to £571/m^2.

24. The panel recognised that whilst the interim rent appeared to support the adopted rate, it was agreed 14 months post the AVD and therefore it would require some adjustment to conform with the statutory rating hypothesis. The panel also found that as per *Lotus v Delta*, the subject rent was the starting point, not necessarily the best evidence. The panel therefore found it necessary to turn to the third proposition and examined rents passing on comparable properties and considered the correct approach in this appeal was to examine the whole 'basket of evidence'.

25. The respondent had provided a schedule of rents. The panel considered the rent on unit 2, 44 Oxford Street, Manchester M1 5EJ as this was a new letting agreed on the AVD. The rent had analysed to £661.36/m^2. Unit 1, 44 Oxford Street was also a new letting agreed just four months prior to the AVD and had analysed at £497.28/m^2. Both properties had an assessment value of £500/m^2. The panel found that as both these properties were further south on Oxford Street, they were in an inferior position than the appeal property.

26. The appellant's representative had stated that properties more north of Oxford Street towards St Peter's Square were of higher value. The appeal property was further north than Unit 1 and Unit 2, Oxford Street but also had the benefit of being on a corner junction of the crossroad with a glass frontage. The panel found that the rental evidence of these units, when viewing it together with the appeal property's rental agreement supported that the adopted rate of £575/m^2 was reasonable.

27. During the challenge exchange, the appellant's representative had referred to rental evidence. 40-42 Oxford Street had a rent review in August 2016 which analysed to £689/m^2. The other properties were situated further away from the crossroads.

28. The appellant's representative also referred to Unit 34 and 36-38 Oxford Street and 133 Portland Street which he stated were in more prominent positions and their entrances were facing the footfall. He also provided a

schedule of comparable evidence for properties on Oxford Street and Portland Street which had assessment rates of £470/m^2 to £525/m^2.

29. The panel gave due consideration to the totality of the evidence presented but found that the tonal evidence varied based on the position of the properties. The panel found that it was not persuaded that the appeal property was disadvantaged, the Wetherspoons referred to was further away from the crossroads and there was a break between it and the appeal property. On the contrary, the panel found that the appeal property was in a prominent position, on a busy junction benefitting from the footfall from both roads and it was on the corner with a full glass frontage.

30. The burden rests with the appellant to persuade the panel that the appeal property is excessively valued but the panel found that the evidence referred to did not conclusively support this and it did not agree that the property was at a disadvantage in terms of its position.

31. There was rental evidence provided for new lettings agreed close to the AVD and considering the basket of evidence provided, the appeal property's rent agreed and the prominent position, the panel found that the current rate of £575/m^2 was reasonable.

32. For the reasons stated, the appeal was dismissed.

Date: 20 March 2023

Appeal number: CHG100772097

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.