THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 rating list appeals; Local Government Finance Act 1988; Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141; Rental evidence; Comparable assessments; Appeal part allowed.

RE: 27 Fore Street, St Austell, Cornwall PL25 5PX

APPEAL NUMBER: CHG100773920

BETWEEN:	The Works Stores Limited	Appellant
	and	
	Alexander Morley (Valuation Officer)	Respondent

BEFORE:	Dr Thomas Webb	(Chair and Senior Member)
	Miss Kiera Riddy	(Senior Member)
CLERK:	Mr Duncan Adamson IRRV (Hons)	
REMOTE HEARING 4:	11 December 2023	
PARTIES PRESENT:	Mr David Bullimore of Lambert Smith Hampton	Appellant's representative
	Mr David Walker	Respondent's representative

Summary of decision

1. Appeal part allowed. The Rateable Value (RV) of the appeal property was reduced to £49,000 with effect from 1 April 2017.

Introduction

2. This appeal had been brought in respect of the following: the appellant was the non-domestic rates payer of the appeal property at 27 Fore Street, St Austell, Cornwall PL25 5PX.

3. The appeal property was a three-storey shop and premises with a ground floor, basement and first floor accommodation situated in a prime position in Fore Street, St Austell. When it

entered the rating list it was valued on a zoned retail basis of £390/m^2 with a 2.5% end allowance for shape applied to the zoned areas on the ground floor only.

4. The original RV of the property was £53,000 and the appellant had proposed that it was over-assessed and should have been assessed on a rate of £350.00/m^2 thereby reducing the RV to £47,750 with effect from 1 April 2017.

5. The valuation officer (VO) considered that the rating list entry was unreasonable based on the evidence and information available but disagreed with the proposed alteration of the list and the appellant appealed to the tribunal. The VO reduced the RV to £51,000 based on a rate of £375/m^2.

6. Mr Dave Bullimore appeared on behalf of the appellant as expert witness and advocate. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), his declaration of truth included a statement that he was instructed on a contingency fee basis. 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 the client's case.

7. Mr David Walker appeared on behalf of the respondent as expert witness and stated that he had complied with his duty to the valuation tribunal in giving his evidence impartially and objectively.

8. 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 it would be admissible in a civil trial or not). The panel therefore considered the expert evidence and attached such weight to it as it saw fit.

9. This tribunal decision document is not and does not purport to be a verbatim record of proceedings.

10. This appeal was considered at the same hearing as appeal number CHG100921150 in respect of 23 Fore Street, St Austell. A separate decision has been made in respect of that appeal.

Issue

11. The Zone A rate of the appeal property.

Evidence and submissions

12. The bundles comprised all of the documents exchanged between the parties as part of the challenge process including the VO's case decision notice, assessment summaries and the appellant's challenge submission.

13. The appellant's representative had submitted that the rent on the appeal property of £50,000 per annum (pa) agreed in December 2015 analysed to £343/m^2, much less than the £375/m^2 rate used by the VO.

14. Further, other key pieces of rental evidence were 19 – 21, 38 and 40-42 Fore Street that averaged to £307/m^2 and he had therefore submitted that a zone A rate of £310/m^2 would therefore be more appropriate. The current 2.5% end allowance to reflect shape and frontage should be retained giving an RV of £42,500.

15. Further new evidence had been submitted by the appellant's representative in respect of 36 and 38 Fore Street showing that these agreements were subject to previously unknown rent-free periods. This evidence was allowed to be included by a senior member of the Tribunal, Cerys Jones, on 25 October 2023. In the opinion of the appellant's representative, these rents supported the reduction of the Zone A rate. Evidence in respect of 39 Fore Street submitted at the same time was not included.

16. On 11 December 2023 the appellant's representative proposed an amended valuation based on £300/m^2 giving an RV of £41,250.

17. The respondent's representative had submitted that the best evidence should come from the rent on the appeal property. The rent of £50,000 pa agreed in December 2015 was a rent review and therefore less weight should be given to it.

18. In his opinion, the best comparable was that of 32 Fore Street whose RV was based on a rate of £390/m^2. This property was in the same prime location in the most valuable retail part of St Austell.

19. In his opinion, the tone of the Zone A rate for the properties in Fore Street, St Austell had been accepted as there had been few challenges and few settlements.

20. 36 and 38 Fore Street were both rent reviews in 2016 and 2015 respectively but required too much adjustment to be useful in the valuation of the appeal property. For 36 Fore Street, he stated that a 17 months' rent-free period was too long a period of time for it to be part of the normal rating hypothesis.

21. For these reasons, he therefore asked the tribunal to dismiss the appeal and confirm the RV of £51,000 with effect from 1 April 2017.

Decision and reasons

22. The panel referred to the Local Government Finance Act 1988 in respect of the definition of rateable value in paragraph 2(1), Schedule 6 to the Act (as amended). 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.

23. The material day for this appeal was 1 April 2017.

24. The panel referred to the hierarchy of rental evidence that should be used to determine the RV of the appeal property as detailed in the authoritative and binding Lands Tribunal judgment of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141. This case had established six propositions giving 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.

25. The panel noted that the respondent's representative had stated that the best evidence should be the rent on the subject property and he had analysed this to be £337.77/m^2. The panel found that this was good evidence for a reduction of the zone A rate, however, it was a lease renewal and therefore not as good as an open market rental agreement in respect of a new letting. The panel therefore found that the zone A rate for the appeal property should be higher than this analysis.

26. The panel was presented with a table of properties in Fore Street and details of their rental agreements and found it helpful to refer to the Ordnance Survey location plan in the evidence pack. This helped the panel to understand the relative positions of the various retail units on Fore Street and their comparability. The panel also referenced the Goad plan of Fore Street submitted by the appellant's representative from the 23 Fore Street hearing.

27. Only two new rent agreements were submitted. 2 Fore Street was agreed on 1 January 2015 and 12A /12B Fore Street was agreed 25 March 2015 both of which were very close to the AVD. For both properties, the rent analysed to £240/m^2, a value considerably lower than any in the close vicinity of the appeal property. The panel found that both properties were too far away from the appeal property to be useful comparators for what had generally been agreed to be the prime location in Fore Street i.e. around where the appeal property was located.

28. The panel referred to the analysed rents for 14 Fore Street of £240/m^2 and that of 16 Fore Street adjacent to it of £390/m^2 showing clear differences in their valuations despite the facts that both of these rents were rent reviews and only three and five months after the AVD. The panel found such differences reflected the fact that the properties closer to the appeal property would have been considered more attractive to the prospective hypothetical tenant at the AVD.

29. The panel found that the evidence in respect of 27 Fore Street (the appeal property) along with 32 and 38 Fore Street showed that these properties were in the best location and that value decreased the further one went from that location.

30. The panel also had regard to the rating assessments of other properties in the locality. While appreciating the rating list was at an end and there was a lack of appeals, the panel also noted there were a lack of settled cases so little regard was given to comparable assessments.

31. The panel found that the valuation of the VO at £375/m^2 was too high and whilst having regard to the best rental evidence, including that of the appeal property, the panel considered that a zone A rate of £360/m2 was the most appropriate and reasonable value for the zone A rate for the appeal property as this would best reflect its location and size. Applying the new rate to the same relativities in the existing valuation resulted in the following revised assessment:

Description	**Area m²/unit**	**£ per m²/unit**	
Ground floor retail zone a	62.3	£351.00	£21,867
Ground floor retail zone b	65.1	£175.50	£11,425
Ground floor retail zone c	92.7	£87.75	£8,134
Ground floor remaining retail zone	78.8	£43.88	£3,458
Ground floor staff toilets	0	£0.00	£0
Basement floor store	44.8	£18.75	£840
Basement floor locker room	11.1	£18.75	£208
Basement floor store	26.9	£18.75	£504
Basement floor store	30.6	£18.75	£574
Basement floor mess/staff room	8.6	£18.75	£161
Basement floor staff toilets	0	£0.00	£0
Basement floor internal storage	0	£0.00	£0
First floor office	5.5	£18.75	£103
First floor internal storage	205.1	£0.00	£0
Sub-total	631.5		£47,274
Air conditioning system	298.9	£7.00	£2,092
Total			£49,366
			rounded **£49,000**

32. The appeal was therefore part allowed and the RV was reduced to £49,000 with effect from 1 April 2017.

Order

33. The Tribunal orders, pursuant to Regulation 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, that the Valuation Officer, within two weeks of the date of this order, shall alter the rateable value in the 2017 list in

respect of The Works Store Limited, 27 Fore Street, St Austell, Cornwall PL25 5PS to an RV of £49,000 with effect from 1 April 2017.

34. A refund of the paid fee will now be arranged (Regulation 13E of the Non-Domestic Rating (Alteration of Lists & Appeals) (England) Regulations 2009. Provided there is no review of the Tribunal's decision the refund will take around six weeks to process.

Date: 9 January 2024

Appeal number: CHG100773920

Rights of appeal

Any party who is aggrieved by the Tribunal's decision 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.