

THE VALUATION TRIBUNAL FOR ENGLAND



Non-domestic rating appeal; 2017 rating list; challenge against compiled list entry; retail warehouse and premises; accuracy of rateable value; comparable assessments; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal dismissed.

RE: SCS 20A The Sandlings, Ipswich IP3 9SN

APPEAL NUMBER: CHG100780187

BETWEEN:	A Share and Sons Ltd	Appellant
	and	
	Joanne Moore (Valuation Officer)	Respondent

PANEL: Mrs AE Fielder (Senior Member)
Mrs C Parkes (Member)

CLERK: Miss F Willson

REMOTE
HEARING ON: 5 May 2023

APPEARANCES: Mr R Davies from Lambert Smith Hampton (on behalf of the appellant)
Mr L Stevens (on behalf of the Valuation Officer).

Summary of decision

1. Appeal dismissed. The rateable value (RV) of SCS 20A The Sandlings, Ipswich IP3 9SN (subject property) is confirmed at £171,000 with effect from 26 February 2018.

Introduction

2. This was a 2017 rating list appeal in respect of the subject property which arises from a challenge made by the appellant's representative on 22 February 2021. The challenge was in respect of the entry in the rating list at £171,000 RV as 'retail warehouse and premises' effective from 26 February 2018. The appellant sought a revised assessment of £143,000 RV based on a tone of £152.50/m². After considering the merits of the challenge, the Valuation Officer (VO) determined that it was not well founded and a decision notice to this effect was issued on 17 June 2022.
3. Mr Davies 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 Davies 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 retail warehouse located on Euro Retail Park close to Ipswich town centre. The retail park includes other brand retail units including Sports Direct, B & Q, Wren and Halfords as well as restaurants. It is also in close proximity to Futura Retail Park which is also a large retail park. It comprises a sales area with ancillary block, a mezzanine floor and air conditioning.
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 in dispute was the basic price to be adopted for the subject property which the VO submitted was not unreasonable at £190/m². The appellant's agent submitted that a reasonable basic price was £152.50/m².

Evidence and Submissions

9. 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 and photographs of the subject property and other retail warehouses in its immediate locality.
10. The appellant's representative submitted that the appeal should be allowed, and the RV on the subject property should be reduced to £143,000 based on a basic price of £152.50/m².

11. In consideration of the comparable properties admitted in evidence, Mr Stevens requested that the tribunal dismiss the appeal and confirm the RV of £171,000 with effect from 26 February 2018.

Decision and Reasons

12. 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.
13. 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.'
14. The RV on the subject property was disputed by the appellant on the basis that other units in the vicinity were excessive due to the rental transaction evidence around the AVD being incorrect. He referred the panel to the neighbouring properties and explained that 20 The Sandlings was from an effective date of 2005 and so was too far removed from the AVD to

carry much weight. He submitted that 24 The Sandlings had a stepped rent and was far removed from the rating hypothesis and so could carry little weight. Mr Davies stated that in connection with 28 The Sandlings the VO had ignored the eighteen months rent free period in its analysis. The pertinent evidence Mr Davies submitted was the two open market lettings of 22 and 28 The Sandlings whose rents analysed to £109/m² and 170/m² respectively. The agreed rent review in February 2015 on 32 The Sandlings analysed to £144.73/m² and with an adjustment of 5% for quantum supports £152.50/m² for the subject property.

15. Mr Davies further submitted that the development of Futura Park which was very close to the subject property meant that there was a considerable amount of new build retail units available on the market. Those units had a basic price of £220/m² which was only slightly higher than the basic price on the subject property of £190/m². This was despite the obvious advantages of them being newly built with a higher specification. He also referred the panel to 1 James Bennett Avenue which was in the vicinity of the subject property and had had a reduction in its basic price to £185/m² supporting a lower basic rate for the subject property than £190/m².
16. The panel was aware that a basket of evidence was required to demonstrate a tone for similar neighbouring properties. These would then be weighed in the basket of evidence required to calculate an RV for the subject property.
17. Mr Stevens submitted that the subject property was the smallest unit on the retail park being 819.81m² but had a basic price which was in line with the other units which were all between 800m² and 1200m². They all had a basic price of £190/m² the same as the subject property. The largest unit was 32 The Sandlings, which was substantially larger than the subject property being 1,865m² and had a basic price of £160/m² to reflect quantum.
18. In relation to the differences in the information provided by the VO compared with that from Mr Davies, Mr Stevens argued that the VO had relied on the form of return (FOR) which was a legal document and so they had to take the information on face value unless provided with evidence to the contrary. In connection with 1 James Bennett Avenue the rent on the unit supported a basic price of £185/m². It was also larger than the subject property being a similar size to 32 The Sandlings and so quantum had to apply. It was therefore not out of kilter with the established tone in the area.
19. The persuasive or legal burden of proof was on the appellant to prove his case and the panel found that they had not discharged that burden. The panel found that it had been provided with evidence to suggest that the tone of the subject property of £190/m² was reasonable. The panel was particularly persuaded by the evidence in connection with 28 and 22 The Sandlings which had a basic price of £190/m². The panel therefore dismissed the appeal.

Date: 18 May 2023

Appeal number: CHG100780187

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.