THE VALUATION TRIBUNAL FOR ENGLAND

2017 Non-domestic rating list appeal; Local Government Finance Act 1988; Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; Shop and premises; Price per m^2 in dispute; Appeal dismissed.

RE: Kiosk 4, Sovereign Centre, High Street, Weston-super-Mare BS23 1HL

APPEAL NUMBER: CHG100782881

BETWEEN:	Parsons Bakery Limited	Appellant
	and	
	The Valuation Officer	Respondent

PANEL: Mr M Heslop-Mullens (Senior Member)
Mrs F Duggan

CLERK: Mr A Johnson Tech IRRV

ON: 11 October 2023

APPEARANCES: Mr D Johnstone of Colliers LLP (for the Appellant)
Miss C Stead (for the Valuation Officer)

HEARING: Conducted remotely using Microsoft Teams

DECISION AND STATEMENT OF REASONS

Summary of decision

1. This appeal was dismissed. The panel found that the rateable value (RV) of the subject property was reasonable. Consequently, the RV remained unchanged at £24,000 with effect from 1 April 2017.

Introduction

2. This decision notice is not a contemporaneous or verbatim record of the proceedings.

3. This appeal had been brought pursuant to regulation 13A of the Non-Domestic (Alterations of Lists and Appeals) (England) Regulations 2009, challenging the Valuation Officer's decision that the appellant's proposal was not well-founded.

4. The appellant's proposal sought alteration to the 2017 non-domestic rating list on the grounds that the rateable value for the subject property of £24,000 on the compiled date of 1 April 2017 was not reasonable.

5. The subject property was a retail unit, described as "shop and premises", which was located inside the Sovereign Centre in Weston-super-Mare. It was described as being roughly in a triangular shape and was valued on a zoned basis. It had a total area of 41.8m^2 with 38.6m^2 falling in Zone A and 3.2m^2 falling in Zone B. These factual matters were not in dispute.

6. Mr Johnstone appeared on behalf of the Appellant and Miss Stead appeared on behalf of the Valuation Officer. Both stated that they were appearing in the dual roles of advocate and expert. Mr Johnstone added that Colliers LLP had been instructed on a fixed fee basis. Both Mr Johnstone and Miss Stead acknowledged that when presenting evidence as expert witnesses they understood and accepted that their duty was to the Tribunal regardless of whether or not the evidence supported their respective arguments.

7. Mindful of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO0* [2018] UKUT (LC), the panel accepted the expert witness evidence on the above basis as the appeal was not considered to be 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 Tribunals' rules concerning admissibility of evidence (regulation 17(2)(a) where the Tribunal can admit evidence whether or not it would be admissible in a civil trial).

8. It was therefore appropriate for the panel to consider the 'expert' evidence and assess what weight, if any, to give it in the context of the issue before it.

Issue

9. The issue in dispute before the panel was the price per m^2 to be applied to the subject property. Mr Johnstone was seeking a reduction from £600 per m^2 to £425 per m^2 for Zone A. The reduction would result in a RV of £17,000 from £24,000.

Decision and reasons

10. This was an appeal against an entry in the 2017 rating list and so the rental levels are to be taken as those passing at the antecedent valuation date (AVD) of 1 April 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014. The material day (the date by which physical factors must be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (as amended). The material day in respect of the subject property is 1 April 2017.

11. Paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988 provides that 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 based upon three assumptions. These assumptions are well known to the parties and so the panel did not consider it necessary to set them out in this decision notice.

12. The starting point for consideration is the actual rent passing on the subject property. The appellant leased the subject property in 2009 for a ten year term; the rent was £29,000 per annum which increased to £29,500 per annum following a rent review, effective from 1 December 2015. The lease was renewed from 1 December 2019 and the rent remained unchanged at £29,500 per annum. This analysed to £733 per m^2.

13. In broad summary, Mr Johnstone argued that the rent on the subject property was anomalous, especially as it had been agreed by the appellant without any professional representation or advice. Mr Johnstone also referred the panel to other shops within the Sovereign Centre which had, following a Group Pre-Challenge Review (GPCR), resulted in reductions in the price per m^2 for Zone A; £425 per m^2 (from £650 per m^2) for those highlighted pink, £520 per m^2 (from £600 per m^2) for those highlighted orange and £520 per m^2 (from £700 per m^2) for those highlighted blue. In view of this, Mr Johnstone considered £425 per m^2 (from £600 per m^2) for the subject property was reasonable.

14. Also in broad summary, Miss Stead argued that the smaller units within the Sovereign Centre (i.e. the kiosks) had been intentionally excluded from the GPCR because they were considered to be a different class of retail space to the larger shops. Therefore, the subject property should be valued in the context of its own rent and the rents of the other kiosks. This, she stated, supported a finding that £600 per m^2 for the subject property was reasonable.

15. The panel accepted that whilst the rent in respect of the subject property appeared to be out of line with the rents of other kiosks in the Sovereign Centre it could not be ignored. Irrespective of the lack of representation and/or advice when the rent was negotiated, it had been freely entered into between the landlord and the appellant which, presumably, allowed the appellant to remain profitable. Whilst the appellant may have benefited from professional

representation and/or advice, the panel concluded that it does not necessarily follow that the landlord would have agreed to accept a lower rent.

16. Mr Johnstone had compared the subject property with other units within the Sovereign Centre which had been included in the GPCR. These were larger and were generally of a more regular and elongated shape. A particular comparison was made with Unit 10-11 which was next to the subject property. This unit was approximately ten times larger and, due to the difference in size and shape, the panel concluded that it would serve a different market and was not directly comparable. In short, a hypothetical tenant fresh to the scene who was considering renting Unit 10-11 was unlikely to consider renting the subject property as an alternative (and vice versa). Therefore, the panel concluded that the subject property was part of a sub-market of retail space within the Sovereign Centre which should be valued in comparison with one another.

17. The panel considered evidence relating to four other kiosks within the Sovereign Centre. These were approximately one third the size of the subject property, ranging from $12.2m^2$ to $14.3m^2$ with annual rents from £11,000 to £14,000 and adopted prices per m^2 from £775 to £850. The panel concluded that an adopted price of £600 per m^2 for the subject property (which results in a RV of £24,000) was reasonable.

18. The panel placed little weight upon Mr Johnstone's comparisons with the 2010 rating list entries for the subject property and others within the Sovereign Centre. This was because each rating list is separate and distinct and the RV of each entry must stand upon its own evidence which is based upon entirely different AVD's and material days.

19. The panel dismissed this appeal.

Date: 19 October 2023

Appeal Number: CHG100782881

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.