THE VALUATION TRIBUNAL FOR ENGLAND

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

RE: 16, West Green Road, London N15 5NN

APPEAL NUMBER: CHG1007845588

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| BETWEEN: | Taj Traders Ltd | Appellant |
| | And | |
| | Mr A Ricketts (Valuation Officer) | Respondent |

PANEL: Dr H M Freeman (Presiding Senior Member)
Ms L M Stuart (Senior Member)

CLERK: Ms J Routledge

REMOTE HEARING ON: 16 October 2023

APPEARANCES: Mr A Marshall for Conneely Tribe (on behalf of the appellant)
Ms M Maine (on behalf of the Valuation Officer).

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**Summary of decision**

1. Appeal allowed in part. The rateable value (RV) of £16,500 with effect from 1 April 2017 for 16, West Green Road, London N15 5NN (the subject property) is reduced to £16,250 due to a five percent end allowance for part of the retail area being masked.

## Introduction

2. This was a 2017 rating list appeal in respect of the subject property which arose from a challenge made by the appellant's representative on 14 March 2022. The challenge was in respect of the entry in the rating list at £16,500 RV as 'shop and premises' effective from 1 April 2017. The appellant sought a revised assessment of £11,500 RV with effect from 1 April 2017 based on a tone of £311/$m^2$. After considering the merits of the challenge, the Valuation Officer (VO) revised the RV to £16,250 having considered an end allowance of five percent should be given as the kiosk masks part of the retail zones A and B.

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 shop and premises in a parade of ten similar properties with a maisonette on the upper floors, there is a kiosk at the front of the shop, all are included in the passing rent for the subject property. It is located on the eastern side of West Green Road. It is let under a lease dated 26 March 2004 with five yearly rent reviews the first being on 19 September 2009.

6. This document is not and does not purport to be a full verbatim record of proceedings.

## Issue

7. The subject property had been valued by the zoning method, based on a zone A rate of £450/$m^2$, which the VO considered to be reasonable. The Appellant's agent was seeking a zone A rate of £311/$m^2$.

## Evidence and submissions

8. The evidence bundle before the panel comprised all of the evidence disclosed and exchanged during the challenge which included rental evidence and its analysis.

9. The appellant’s representative submitted that the appeal should be allowed, and the RV on the subject property should be reduced to £11,500 based on a rate of £311/m$^2$.

10. Ms Maine requested that the tribunal dismiss the appeal and confirm the RV of £16,500 with effect from 1 April 2017.

**Decision and reasons**

11. 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.

12. 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.

13. Mr Marshall referred to a rent review on the subject property which agreed a rent of £25,000 per annum from 19 September 2014, this rent included the maisonette and kiosk. The kiosk was let in March 2017 and the maisonette was rented on an Assured Shorthold Tenancy (AST). He calculated the rent on the subject property to be £12,900 calculated as follows:

> “Rent for whole building £25,000 less £12,100 for the AST (£17,290 less 30 per cent for voids and letting agent fees) give a resulting rent of £12,900.”

When asked Mr Marshall could not provide the basis for this adjustment, he provided no evidence of fees or voids.

14. Following the challenge the Agents identified number 14 and number 10 West Green Road as being comparable properties. These were not raised in the initial challenge and although evidence of the lease was provided for number 14 no evidence of the amount of the AST for the residential unit above was provided for either property. This evidence was available but not provided at the challenge stage and without details of the ASTs on these properties, the panel gave this no weight.

15. The VO provided rental evidence on six properties in West Green Road with five being rent reviews or lease renewals and the sixth being a new letting. These covered a period from 17 November 2014 to 1 November 2016. The rents analysed to between £443.60 and £562.79.

16. The appellant disputed the rental evidence arguing that the VO had referenced rental evidence from shops in different parts of the street and which were in a different mode and category of use apart from No 34 which is some distance away. The only unit in the same parade is 6a but this is a book maker (Paddy Power). Numbers 40 and 52 were takeaways.

17. Ms Maine drew the panel's attention to the location plan which showed that 6A was a shop and premises as was number 52. The panel noted the location plan provided by the VO which confirmed Paddy Power was at number 6 and that 6A was in fact a shop and premises.

18. The panel having had regard to the first proposition in *Lotus and Delta*, the subject rent is the starting point found that the weight to be attributable to the renewal lease was diminished by the lack of an information regarding the AST at the time of the lease being granted and the later sub-lease on the kiosk. Therefore, the weight to be placed on the appeal property rent was limited.

19. The panel went on to assess the other comparable properties in order to form an opinion on the value of the appeal property by reference to these properties. The panel placed weight on 6a West Green Road which was a lease renewal for ten years agreed on 17 November 2014 at a rent of £14,000 which analysed to £533.33, the new letting on 52 West Green Road on 1 February 2015 which analysed to £503.79 and the rent review on 40 West Green Road which analysed to £529.53 all supported the tone of £450.00 for shops and premises in the road. Whilst there were some differences in their size, the panel found that they did constitute a basket of evidence and provided comparable evidence useful in the valuation of the appeal property.

20. 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 £450/m$^2$ was reasonable.

21. The panel accepted the Kiosk masked part of the zone A and B of the appeal property and considered the 5 per cent end allowance reasonable.

22. The panel therefore confirmed the revised RV of £16,250 and allowed the appeal in part.

**Date:** 6 November 2023

**Appeal number** CHG1007845588

## Refund of appeal fee

23. A refund of the paid fee will now be arranged under Regulation 13E of the NDR (Alteration of Lists and Appeals) Regulations 2009. The refund will take around six weeks to process.

## 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.