VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 rating list appeal; Local Government Finance Act 1988; Price per m^2 in dispute; rental evidence; comparable assessments; Appeal allowed in part.

APPEAL NUMBER: CHG100788722

BETWEEN:	Brunel Sandwich Shop	Appellant
	And	
	Andrew Ricketts (Valuation Officer)	Respondent

RE:	BST-GRD FLR 211, Strand, London WC2 1AP
PANEL:	Mr Stephen Wood (Presiding Senior Member) Mr William Read (Senior Member)
CLERK:	Mr Duncan Adamson IRRV (Hons)
SITTING ON:	26 February 2024 (Remote Hearing number 1)
APPEARANCES:	Mr Henry Edwardes of Altus Group plc representing the appellant Ms Lucy Pokuaa-Amofah for the respondent

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Summary of decision

1. Appeal allowed in part. The Rateable Value (RV) of the appeal property was reduced to £21,250 with effect from 1 April 2017.

Introduction

2. This 2017 rating list appeal had been brought in respect of the following: the appellant was the non-domestic ratepayer of the appeal property BST-GRD FLR 211, Strand, London WC2 1AP. The property had been entered in the 2017 rating list as a shop and premises with an RV of £26,250 based on a rate of £1,600/m^2 with effect from 1 April 2017.

3. The challenge proposal was submitted on behalf of the Brunel Sandwich Shop and was received by the Valuation Officer (VO) on 23 March 2022. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was unreasonable and a revised RV of £19,500 based on a rate of £1,200/m^2 was proposed with effect from 1 April 2017.

4. The VO issued a challenge case decision notice on 27 June 2023 which stated that, based upon the evidence and information available, the rating list entry was unreasonable but disagreed with the entry proposed. The VO reduced the RV to £24,500 based on a rate of £1,500/m^2.

5. The appellant continued to seek an RV of £19,500.

6. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal had been made on the grounds that the valuation for the hereditament was not reasonable. The appeal was received by the Tribunal on 14 September 2023.

7. Mr Edwardes 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) he confirmed 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 that 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.

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 or not it would be admissible in a civil trial).

9. The panel therefore considered the expert evidence and attached such weight to it as it saw fit.

10. The appeal property was a shop and premises covering the basement and ground floor of a five storey building with a total floor area of 16.43m^2 in terms of main space (ITMS) and was occupied by the Brunel Sandwich Shop for the sale of food. It was situated on the south side of the Strand between Essex Street and Middle Temple Lane with The Royal Courts of Justice opposite.

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

Issue

12. The issue in dispute is the price per m^2 to be adopted in the valuation of the appeal property.

Evidence and submissions

13. The bundle comprised all of the documents exchanged between the parties as part of the challenge process including the appellant's challenge submission, initial response to the challenge and the VO's challenge case decision notice.

14. On behalf of the appellant, Mr Edwardes stated that the appeal property's rent was a £20,000 rent renewal agreed on 1 October 2016 and this analysed to £1,216.92/m^2. The market for such properties was growing from the AVD onwards and he found it reasonable to assume that the rent would have been lower at the AVD. He felt that this was in line with the principles stated in the *Lotus* case and was therefore good evidence to reduce the rate.

15. He had submitted comparable properties in and around the Strand to show that the base rate was too high for the appeal property.

16. Number 215 Strand, a café occupied by the Soho Coffee Company, at 160m^2 it was four times larger than the appeal property, was in a better location in that it was opposite the Royal Courts of Justice and fronted by a pedestrian crossing and therefore in a busy area with greater footfall. This would give rise to a higher rental value and he had analysed the rent from the Form of Return (FOR) to £1,697/m^2. The property was valued on an unadjusted rate of £1,600/m^2. This therefore supported a lesser value for the appeal property.

17. The 217 – 221 Strand rental agreement for Pret a Manger was £225,000 from 25 March 2014 and although its valuation was based on a rate of £1,500/m^2 he had analysed it to £1,225.34/m^2. In his opinion, at over 600m^2 in area, this was in a different market to that of the appeal property and not useful in its valuation.

18. The rental evidence for 226 Strand was a stepped rent from 2015 which he had analysed to £1,298.59/m^2 and so supported a reduction in the appeal property rate.

19. For 212 Strand the rent was £37,500 from 15 June 2017 that he had analysed to £1,773.05/m^2. However, he attached little weight to this as the rental agreement was 27 months after the AVD.

20. He referred to GND FLR 190 Strand where a proposal had been well founded and the base rate reduced to £1,200/m^2 at the check stage and also to 137 Strand where the base rate had been reduced to £1,350/m^2 at the challenge stage.

21. 190 Strand was a coffee shop only 50 metres from the appeal property and in the same valuation scheme as the appeal property. However, it was in a better location a superior property and therefore provided support for a reduction in the appeal property rate.

22. For these reasons he contended that the appeal property be valued at a rate of £1,200/m^2 giving an RV of £19,500 with effect from 1 April 2017.

23. On behalf of the VO, Ms Pokuaa-Amofah submitted that the subject rent was an anomaly and did not represent the rental values pertaining to the area. She stated that the rental evidence should be seen as a basket of evidence for comparative purposes.

24. She placed the greatest weight on 226 Strand as it was of a similar size and close to the appeal property and the rental evidence showed that it was a new lease agreed in September 2015. The rent analysed to £1,600/m^2.

25. She also placed weight on the property 215 Strand as the rent had been agreed one month prior to the appeal property rent and analysed to £1,639/m^2.

26. 217 – 221 Strand had been settled at a rate of £1,500/m^2 and had not been appealed. In her opinion, this settlement carried more weight than the analysed rent of the appeal property.

27. In respect of 212 Strand, she had noted that it was of a similar size to the appeal property and was let on a new lease, however, she placed low weight on this evidence as the rental agreement was over two years after the AVD.

28. In her view, 190 Strand was not comparable to the appeal property and its settlement at £1,200/m^2 reflected that. Little weight should be placed on this evidence.

29. For these reasons she contended that the appeal property be valued at a rate of £1,500/m^2 giving an RV of £24,500 with effect from 1 April 2017.

30. As the hearing progressed both parties made reference to new evidence in their representations, none of which was raised as a preliminary matter, these were therefore breaches of the tribunal's standard directions. The panel considered these matters in light of the Upper Tribunal decision in *Simpsons Malt Ltd and Other v Jones* (VO) UKUT [2017] 460 and had regard to *Denton v TH White Ltd* [2014] 1 WLR 3926 which dealt with the non-compliance to directions. This laid out the three stage test which the panel had to consider.

    Stage 1 – If the panel concluded that the breach was not serious or significant then relief from sanctions should usually be granted.

    Stage 2 – Then the panel would need to consider why the failure or default occurred. The burden is on the defaulting party to persuade the tribunal to grant relief. They must explain what happened and why. Illness or accidents are good reasons but overlooking a deadline is not.

    Stage 3 - The panel must consider all the circumstances of the case including:

    the need for litigation to be conducted efficiently and at a proportionate cost;
    a failure to grant a sanction may leave an inaccuracy being uncorrected; and
    the need to enforce compliance with rules, directions and orders;

31. The appellant's representative made reference to the stepped rent for 226 Strand but now referred to a copy of the actual lease. The VO's representative stated that she had only had access to the FOR which did not give the details of the stepped rent and she objected to this evidence being included.

32. The chair of the panel asked the appellant's representative when the lease came to light. He replied that it was on 1 February 2024, he had bought it from the Land Registry.

33. The LO's representative stated that the lease was dated 2015 and so would have been known of and available during the check, Challenge, Appeal (CCA) process. It had not been supplied to the tribunal nor the VO and the FOR made no mention of a stepped rent. The areas of the property were also different to those in the evidence bundle.

34. The panel found that there had been a breach, that it was serious and that the VO's representative had been prejudiced. The evidence was therefore rejected.

35. The VO's representative had made reference to the FOR of the appeal property and the fact that the appellant occupied it in 2006 but the effective date of the rent was 24 March 2012.

36. The appellant's representative had never seen this FOR and would need time to review it if it was to be included, he did therefore object to its inclusion.

37. The panel found that there had been a breach, that it was serious and that the appellant's representative had been prejudiced. The evidence was therefore rejected.

Decision and reasons

38. 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). The rateable value of any hereditament is to be taken to be the amount, determined in accordance with the statutory assumptions, equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year, on 1 April 2015 the "antecedent valuation date" (AVD). The material day for this appeal was 1 April 2017.

39. The panel noted that both parties had referred to the leading judgment of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141.

40. The case for the appellant's representative was that the subject rent was a key piece of evidence whilst the VO's representative stated that the subject rent was part of a basket of evidence.

41. The panel noted that both parties had analysed the rent to just over £1,200/m^2, substantially lower than its unadjusted valuation rate and, further, without the fit-out cost of 5%, analysed to lower than £1,200/m^2. The panel found the evidence of use even though it was a lease renewal (rather than a new lease) agreed some 18 months after the AVD. The panel found the evidence supported a reduction in the unadjusted rate.

42. The appeal property straddled the corner of Strand and Essex Street and the panel noted from the VO's photographs that the street signs were above the shop façade on either side. The panel found that its location was somewhat worse than the properties on the main Strand street parade and that it was very unlikely that it would be visible from the main parade thus reducing any potential footfall and consequently, its value.

43. The panel considered the comparability of the properties that had been submitted and found that 226 Strand, currently being occupied by a watch shop, was much narrower than the appeal property although of a very similar overall size. Although close to the appeal property it was in a much better location being on the main Strand parade opposite a pedestrian crossing and the Royal Courts of Justice.

44. The panel therefore found that this property gave support to a reduction in the rate for the appeal property.

45. The panel found that 217 – 221 Strand was considerably larger than the appeal property in a better location and that any potential tenant would find it very much more desirable than the appeal property. The rate had been settled at £1,500/m^2 and the panel therefore found that it was good evidence in supporting a reduction in the appeal property rate.

46. The panel also found that for similar reasons 215 Strand, valued on a rate of £1,600/m^2 also supported a reduction in the appeal property rate. This property was adjacent to 217 – 221.

47. The panel noted the rental agreement for 212 Strand was from 15 June 2017, over two years from the AVD and therefore placed little weight on this evidence. The panel also noted that this rent analysed at the highest rate of the submitted comparable properties and found that it may well be something of an outlier.

48. Overall, the panel found that the poor location of the appeal property in comparison to those on the main Strand street parade was significant and that this was reflected in the rental values when analysed by both the appellant's and the respondent's representative.

49. The panel found that sufficient evidence had been produced to show that the appeal property was overvalued on an unadjusted rate of £1,500/m^2.

50. In view of all the evidence presented, the panel decided that a rate of £1,300/m^2 was reasonable giving a rateable value of £21,250 with effect from 1 April 2017.

Floor	Description	Area m^2	Area / £m^2	Value
Basement	Internal Storage	11.40	£65.00	£741.00
Basement	Vaults	10.90	£42.90	£467.61
Ground	Retail zone A	15.50	£1,300.00	£20,150.00
				£21,358.61

51. The appeal was therefore allowed in part.

Order

52. 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 Brunel Sandwich Shop, BST-GRD FLR 211 Strand, London WC2 1AP to an RV of £21,250 with effect from 1 April 2017.

53. 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: 18 March 2024

Appeal number: CHG100788722

Right of further 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.