THE VALUATION TRIBUNAL FOR ENGLAND

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

RE: Subway, 6 Bull Street, Birmingham B4 7LB

APPEAL NUMBER: CHG100794210 & CHG100794201

BETWEEN:	Balle Ltd	Appellant
	and	
	Mr Dal Virk (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 D Bullimore from Lambert Smith Hampton (on behalf of the appellant)
Ms A Boorman (on behalf of the Valuation Officer).

Summary of decision

1. Appeals dismissed. The panel confirmed the rateable value (RV) of Subway, 6 Bull Street, Birmingham B4 7LB (subject property) at £34,750 with effect from 1 April 2017. It also confirmed the material change in circumstances (MCC) with a reduction of 7.5% with effect from 6 June 2021 to 8 May 2022 (the disputed period).

Introduction

2. These are two appeals in connection with the subject property the first being a 2017 rating list appeal which arises from a challenge made by the appellant's representative. The challenge was in respect of the entry in the rating list at £37,750 RV as 'shop and premises' effective from 1 April 2017. This was a compiled list entry, the material date for this appeal was therefore 1 April 2017. The appellant sought a revised assessment of £29,500 RV based on a tone of £600/m^2.

3. The second appeal was in respect to the appellant's claim for a temporary end allowance of 40% during the disputed period as result of the tram and road works. The material date for the MCC is 8 November 2021 the date the check was submitted. The VO agreed that there was some disruption to the subject property but suggested an allowance of 7.5%.

4. After considering the merits of the challenge, the Valuation Officer (VO) determined that neither appeal was well founded and decision notices to this effect were issued.

5. Mr Bullimore 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 Bullimore 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.

6. 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.

7. The subject property comprises a retail unit on Bull Street in central Birmingham which is part of the Square Shopping Centre. It is occupied by Balle Ltd who operate a Subway franchise. The property consists of a retail area on the ground floor and storage in the basement.

8. This hearing was held remotely via Microsoft Teams.

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

Issues

10. The issues in dispute were firstly the price for zone A which the VO submitted was not unreasonable at £700/m^2. The appellant's agent submitted that a reasonable zone A rate was £600/m^2. The second appeal concerns a temporary end allowance for the road and tram works during the disputed period for which the VO has offered 7.5% and the agent submits should be 40%.

Evidence and Submissions

11. 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 shops in its immediate locality.

12. The appellant's representative submitted that the appeal should be allowed, and the RV on the subject property should be reduced to £29,500 based on a zone A price of £600/m^2 and a further temporary allowance of 40% for the disputed period.

13. In consideration of the comparable properties admitted in evidence, Ms Boorman requested that the tribunal confirm the RV of £34,750 with effect from 1 April 2017. She further submitted that 7.5% was the correct temporary allowance during the disputed period.

Decision and Reasons

14. 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.

15. 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.'

16. The RV on the subject property was disputed by the appellant on the basis that it is not in line with comparable properties in the locality. The subject property is held on a ten year lease from 11 November 2014 at a headline rent of £40,000 pa with a five year rent review and tenant break clause. There was a three month rent free period and the lease was not on a full FRI basis. There was a cash incentive to the tenant and the occupier subsequently agreed a reduction in the rent to £30,000 pa. Mr Bullimore therefore analysed the rent to £667/m^2.

17. Mr Bullimore then drew the panel's attention to other properties in Bull Street on the same parade of shops which had their zone A reduced to £600/m^2. These properties were assessed at the same basis in the 2010 list and he therefore did not see any reason why they would not be assessed with the same zone A price in the 2017 list.

18. Ms Boorman submitted that the lease on the subject property included £90,000 fit out costs and half of that was assumed to be rateable but she had not adjusted the rent for the three month rent free period. This analyses to £896.55/m^2 zone A after making the adjustments and therefore supports the tone of £700/m^2 presently applied to the subject property.

19. The panel was aware that the rent paid for the subject property was the first piece of evidence in the basket of evidence and that was followed by the tone of similar neighbouring properties. These would all be weighed to calculate an RV for the subject property.

20. Ms Boorman submitted that the fact the comparable properties being number 5 and numbers 95/96 Bull Street had the same assessment in the 2010 list did not mean that they would have the same zone A price in the 2017 list. Number 95/96 was in fact three times the size of the subject property and so quantum would have to be taken into account. The tone set in one list does not automatically transfer over to the next list and there was no reason therefore that the zone A price should be reduced on the subject property on that basis. The purpose of a new list is to reflect new market and economic factors. The new leases on numbers 5 and 95/96 Bull Street were very close to the AVD and supported a zone A price of £600/m^2 whilst the rental evidence on the subject property supported a zone A price of £700/m^2.

21. The panel found that the fact the properties were all given the same zone A rate in the 2010 list did not mean they would have the same zone A price in the 2017 list.

22. Ms Boorman confirmed that the VO was in agreement to grant a temporary end allowance in relation to the tram and road works. The other properties in the area had been granted a 20% allowance for the tram works and 20% for the change in the bus route. She also drew the panel's attention to the fact that these allowances all related to the 2010 list and not in the 2017 list. There was still pedestrian access to the subject property but in the case of the other properties the entire road was closed. She also submitted that due to the type of business of the subject property being a Subway the bus route changes would not impact the business as much and that 7.5% was the correct end allowance in her view. The works were already known about at the time the tenancy was negotiated and so a hypothetical tenant would allow for the effects of the road and tram works in their negotiations.

23. Ms Boorman argued that any end allowance should cease from 8 May 2022 as that was when the works were completed Mr Bullimore however argued that the works did not actually end until Jan 2023.

24. The panel noted that allowances are all considered on a case by case basis and when determining the level of the allowance the actual impact of the work on that specific property had to be taken into account. The panel found that the allowance should end on 8 May 2022 as Mr Bullimore originally claimed the allowance should continue until spring 2022 and had not introduced any evidence that the works continued until January 2023.

25. 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 was particularly persuaded by the zone A price of £700/m^2 on number 5 Bull Street, which was the neighbouring property, and so the tone for the subject property of £700/m^2 was in the panel's view reasonable. The panel also found that the temporary allowance for the tram and road works of 7.5% was reasonable.

26. The appeals are therefore dismissed.

Date: 16 May 2023

Appeal number: CHG100794210 & CHG100794201

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