THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; Challenge against Compiled List entry; Shop and Premises; accuracy of rateable value; rental and comparable evidence considered; found that weight of evidence did not support a reduction in the assessment of subject property; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141*. Decision: Dismissed.*

RE: 43-44 Clock Towers Shopping Centre, Rugby, CV21 2JR

APPEAL NUMBER: CHG100796128

BETWEEN:	The Works (Represented by Lambert Smith Hampton) and	Appellant
	Dal S Virk (Valuation Officer)	Respondent

PANEL: Miss K Riddy (Presiding Senior Member)
Miss L Westwell (Senior Member)

REMOTE HEARING: 6 November 2023

CLERK: Mr J N Massey

APPEARANCES: Mr D Bullimore of Lambert Smith Hampton for the Appellant.
Mr M Latif for the Valuation Officer.

Summary of decision

1. Appeal dismissed. The panel considered that the existing entry in the Rating List for the appeal property of Rateable Value (RV) £43,500 was not excessive.

Introduction

2. This was a 2017 Rating List appeal. 43-44 Clock Towers Shopping Centre, Rugby, CV21 2JR (“the subject property”) had been entered in the 2017 rating list as ‘Shop and Premises’ at a RV of £44,750 with effect from 17 August 2017.

3. The challenge proposal was submitted by Lambert Smith Hampton on behalf of The Works and was received by the Valuation Officer on 14 April 2022. It had been made on the grounds that the RV shown in the rating list on 17 August 2017 was wrong. A revised RV of £24,750 was proposed with effect from 17 August 2017.

4. The Valuation Officer issued a challenge case decision notice on 15 June 2022, which stated that based upon the evidence and information available, the zone A price of £450 per m^2 was reasonable, but agreed to the area amendments proposed by the appellant and amended the rating list entry to RV £43,500 RV with effect from 17 August 2017.

5. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal has been made on the grounds that the valuation for the hereditament is not reasonable. The appeal was received by the Tribunal on 14 October 2022.

6. The appeal hereditament comprises a shop situated on the ground and first floor in a parade of shops in Market Mall, in the Clock Towers Shopping Centre in Rugby (now known as the Rugby Central Shopping Centre). The retail space is located on the ground floor and the survey areas totalling $276.2m^2$ ($92.3m^2$ ITZA) have been agreed by the parties.

7. Mr Bullimore appeared on behalf of the appellant as both surveyor-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' declaration of truth included a statement that he was instructed on a contingency fee basis. 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 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). The panel therefore considered the expert evidence and attached such weight to it as it saw fit.

9. Mr Latif appeared on behalf of the respondent as both advocate and expert witness. His declaration of truth included a statement that he was not instructed under any conditional fee arrangement and 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 the evidence supported the respondent's case.

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

Issue

11. The issue between the parties concerned the RV of the appeal property and specifically, the zone A rate per m² that should apply. Mr Bullimore, for the appellant, was seeking a reduction to RV £24,750 based on a zone A rate of £250.00 per m². Mr Latif, for the VO, sought to defend the existing RV of £43,500 which was based on the existing zone A rate of £450.00 per m².

Preliminary issue

12. After Mr Bullimore had concluded his presentation, Mr Latif started his questioning by asking whether Mr Bullimore had any objection the introduction of new evidence in the form of details of settlements in the Clock Towers Shopping Centre. Although Mr Bullimore did not have any objection to this evidence, the tribunal clerk advised that in accordance with the VTE Consolidate Practice Statement (Standard Directions for 2017 List and later List NDR appeals), a party must make written application to the Tribunal at least four weeks before the hearing if they intend to include new evidence at the hearing.

13. Mr Latif stated that the additional evidence did not add anything to the respondent's case, but that Mr Bullimore had stated that there were no settlements that he was aware of in the shopping centre. Mr Latif considered that the panel should be given details of challenges which were not well founded but not appealed.

14. The panel did not consider that the respondent had provided good reason for not making an application for new evidence within the timescale set out in the Tribunal's direction. The appellant had stated in the appeal document submitted on 4 October 2022 that he was only aware of one challenge for retail units in Clock Towers Shopping Centre and the respondent has had since then to provide further settlement evidence. The panel considered that had the respondent provided this evidence to the appellant at challenge stage, or even before the hearing, the appellant would have had the opportunity to research this information and respond. As it was, the panel considered that the inclusion of the new evidence would disadvantage the appellant and it considered that it was not in the interest of justice to allow it.

Evidence and submissions

15. The evidence bundle comprised all of the documents exchanged between the parties as part of the challenge process: Valuation Officer's challenge case decision notice; appellant's submission; and a photograph and location plan of the appeal property.

Decision and reasons

16. The term 'rateable value' is defined in paragraph 2(1), Schedule 6 to the Local Government Finance Act 1988 (as amended):

> "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 on these three assumptions –
>
> a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;
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> b) the second assumption is that immediately before the tenancy begins the hereditament is in a state of reasonable repair, but excluding from this assumption any repairs which a reasonable landlord would consider uneconomic;
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> c) the third assumption is that the tenant undertakes to pay all usual tenant's rates and taxes and to bear the cost of the repairs and insurance and the other

expenses (if any) necessary to maintain the hereditament in a state to command the rent mentioned above".

17. In respect of an appeal against an entry in the 2017 rating list, 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 (SI 2014 No. 2841).

18. The material day (the date by which physical factors have to be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject appeal, the material day is 17 August 2017.

19. Both parties had referred *to Lotus and Delta v Culverwell*. This Lands Tribunal judgment provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property was considered to be the correct starting point but, where available, rents on similar properties were also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.

20. Mr Bullimore referred to the rent passing on the subject property, which he stated was £15,000 per annum (pa) effective from August 2017 for a term of two years. Taking the one-month rent-free period as an incentive, resulted in a net rent of £13,962 pa which he had devalued to £145.00 per m^2 (zone A) and he argued this indicated that the adopted rate of £450.00 per m^2 was excessive and should be reduced. He stated that this lease was renewed for a further two years in August 2019 at an agreed rent of £15,000 pa. To further support a reduction, Mr Bullimore had referred to the rent of Units 45-48 Clock Towers Shopping Centre, which was next door to the subject property and had been let to Brighthouse with effect from 13 February 2013 for £85,000 pa. Taking the full eighteen months rent free period as incentive had resulted in a devalued rent of £268.00 per m^2 (zone A).

21. In line with the decision in *Lotus and Delta v Culverwell (VO)* [1976] RA 141 Mr Latif suggested that the rent on the subject property should be taken as a starting point, and the rent of comparable properties in the locality should also be given weight. He considered that the subject rent was out of line with the rents on similar units in the same shopping centre which had also been assessed at a zone A rate of £450.00 per m^2.

22. The panel noted that the rent of £15,000 pa on the subject property had been agreed almost two and a half years after the AVD, and again four and a half years after the AVD. The appellant had also provided a comparable rent on Units 45-48 Clock Towers Shopping Centre, which he had devalued to £268.00 per m^2. Mr Latif considered that little weight should be attributed to this rent, as it was agreed over two years before the AVD and required significant adjustment due to being a stepped rent and having a particularly long rent-free period. Mr Latif had devalued this rent to £318.00 per m^2 (zone A). The other comparable rent provided by the appellant was for Unit 35, Clock Towers Shopping Centre, which he had devalued to £477.00 per m^2 (zone A). Mr Latif considered that this would support a zone A rate of £450.00 per m^2 for the appeal property but that it should be given little weight as it had been agreed three and a half years after the AVD.

23. Mr Latif considered that the subject rent was an outlier compared to other rents on shops in the shopping centre which had been agreed within 12 months of the AVD:

- Units 3-4 Market Mall, Clock Towers Shopping Centre, total area 105.7m^2, lease renewal for five years from 26 September 2014 agreed at £30,750 pa devalued to £462.13 per m^2 (zone A).
- Unit 27B Northway, Clock Towers Shopping Centre, total area 55.4m^2, new lease for five years from 1 December 2014 agreed at £14,000 pa, ten days rent free period for fitting out, devalued to £579.46 per m^2 (zone A).
- Unit 40 Market Mall, Clock Towers Shopping Centre, total area 533.6m^2, lease renewal for five years from 1 March 2015 agreed at £70,000 pa, adjusted for three month rent free period, devalued to £466.10 per m^2 (zone A).
- Unit 42 Market Mall, Clock Towers Shopping Centre, total area 169.1m^2, new lease for ten years from 1 June 2015 agreed at £36,000 pa, adjusted for three month rent free period, devalued to £544.65 per m^2 (zone A).
- Unit 39A Manning Walk, Clock Towers Shopping Centre, total area 424.7m^2, lease renewal for five years from 1 July 2015 agreed at £64,000 pa, adjusted for three month rent free period, devalued to £486.55 per m^2 (zone A).
- Units 1-2 Market Mall, Clock Towers Shopping Centre, total area 177.9m^2, lease renewal for five years from 14 January 2016 agreed at £41,000 pa, devalued to £508.24 per m^2 (zone A).

24. The panel noted that neither party had provided a plan showing the location of the appeal property or their comparable properties within the shopping centre and was aware that differences in location can have a marked effect on value. It noted that the appellant's two comparable properties were in Market Mall, near the subject property. Whilst Mr Latif stated in response to questions from the panel that his comparable properties were spread around the shopping centre, the panel noted that four of them were in Market Mall.

25. The panel was satisfied that most weight should be attached to the respondent's comparable properties, which were located in Market Mall, and whose rents has been agreed within 12 months of the AVD. They had been assessed at a zone A rate of £450.00 per m^2 and they ranged in size from 105.6m^2 to 533.6m^2. Their devalued rents ranged from £462.13 per m^2 to £544.65 per m^2. Due to their remoteness from the AVD, the panel found that the rents agreed on the subject property and on Units 45-48 Clock Towers Shopping Centre were not reliable and should be given little weight in determining the correct RV for the subject property.

26. Having considered both parties' evidence and the rental analysis for properties in the locality, the panel concluded that the zone A rate of £450.00 per m^2 adopted by the respondent was supported by the basket of rental evidence and was fair and reasonable. The appeal was therefore dismissed.

Date: 20 November 2023

Appeal number: CHG100796128

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.