THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; accuracy of the rateable value in the list as at 1 April 2017; shop and premises; rental evidence; comparable assessments; appeal dismissed.

RE: Boots, 47-55 Foregate Street, Chester CH1 1NA

APPEAL NUMBER: CHG100800039

BETWEEN:	Boots UK Ltd	Appellant
	and	
	Ms D Bunyan (Valuation Officer)	Respondent

PANEL: Ms C Caiquo (Presiding Senior Member)
Mrs H Newman-Newing (Senior member)

CLERK: Mrs H Beresford

REMOTE HEARING ON: 15 January 2024

APPEARANCES: Mr G Garnett of GL Hearn Ltd (Appellant's representative)
Ms M Davenport (for the Valuation Officer)

Summary of decision

1. The appeal was dismissed, the assessment was confirmed at rateable value (RV) £995,000 with effect from 1 April 2017.

Introduction

2. This appeal has been brought in respect of Boots, 47-55 Foregate Street, Chester CH1 1NA (the 'appeal property'), which was entered in the 2017 rating list as 'shop and premises' at RV £995,000, effective from 1 April 2017.

3. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, GL Hearn made an appeal to the Valuation Tribunal for England (VTE) on behalf of Boots UK Ltd. The appeal was made because the Valuation

Officer decided not to alter the 2017 rating list following the appellant's check and challenge. The appellant had sought a reduction to RV £600,000 with effect from 1 April 2017.

4. The appeal to the VTE was made on the grounds that the valuation for the appeal property was not reasonable, as the Valuation Officer had not made any alteration to the rating list in his challenge decision notice.

5. The appeal property comprises a shop and premises. It is a prominent large shop located within the prime retail area of Chester. The left-hand section has a front which is a 1904 rebuild of a Tudor/Elizabethan building which is half timbered "black and white style" and is Grade II Listed. It is on three floors, the ground floor is the sales area, and the first and second floors are used for storage of stock. The right-hand section is a more modern two storey brick-built building and comprises ground floor sales and first floor storage and offices.

6. The appellant's representative, when appearing as expert witness, stated that he was not on a conditional fee arrangement.

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

Issue

8. The base level of value adopted for the appeal property was not agreed. The Valuation Officer has adopted £165/m^2 in respect of the appeal property, but the appellant sought a reduction to £100/m^2. The parties agreed that the property measured 6,043m^2.

Evidence and submissions

9. The bundle of evidence comprised the documents exchanged between the parties as part of the challenge process which included amongst other things: the appellant's challenge submission and full supporting information; the exchanges of evidence between the parties; site and location plans; the Valuation Officer's challenge case decision notice, assessment evidence; photographs and details of the appeal property and those cited as comparable by both parties; and a copy of the proposed valuation submitted by GL Hearn.

Decision and reasons

10. The panel had to determine the rateable value for the appeal property, which represented a rent that a hypothetical landlord and tenant would agree, as at the antecedent valuation date (AVD),1 April 2015. The common date was used to ensure that every property was treated in a consistent way.

11. The term 'rateable value' is defined in 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;

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;

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"

12. The Lands Tribunal judgment in *Lotus and Delta* v *Culverwell (VO) and Leicester City Council* [1976] RA 141 which had been referred to by both parties 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.

13. The panel noted that Mr Garnett had stated that there was rental evidence for the subject property, a lease renewal had been agreed from 15 December 2017 at a rent of £775,000 per annum, with full repairing and insuring and with a twenty four month rent free period. Mr Garnett had amortised this rent over ten years, at 7% using a discounted cash flow system, as he stated, the Rating Manual recommends, with an addition of 5% for the dated and spartan nature of the fit out giving a net of £28,775 annual equivalent addition. This led to an adjusted rent of £604,273 (£100/m^2). At the hearing Mr Garnett submitted that he had recently found out that there had been an interim rent agreed in 2015 for £620,000. The panel noted that the lease agreed on 15 December 2017 was agreed almost three years after the AVD and that it was a renewal of an existing lease rather than a new letting. It was also aware that no evidence of the interim rent had been provided and it noted Ms Davenport's argument that such rents are unreliable because they are made under section 24 of The Landlord and Tenant Act 1954, they are set by the courts and are not market rents. The panel did not attach any weight to the 2015 rental evidence and only moderate weight to the 2017 rental evidence, due to its distance from the AVD.

14. Mr Garnett referred to the judgement of *Stock Auto Breakers v Sykes* (VO) [2020] UKUT 0052 (LC) he argued that in this case the Upper Tribunal held that a 2017 rent was not to be discounted. The panel found that whilst the passing rent forms a good starting point for determining the RV of a property other evidence should also be taken into consideration.

15. Mr Garnett had compared the appeal property to the Boots store in Cheltenham and he had made comparisons between the cities of Cheltenham and Chester; he contended that Cheltenham was the better shopping destination, and that the locality of the appeal property was in decline. He argued that the Boots store in Cheltenham, 197-199 High Street GL50 1DB, is a much more modern shop, in a good position, with first floor sales and an excellent fit out. The RV in the List is based on £105/m^2 for 5,398m^2. Mr Garnett argued that this property supported £100/m^2 for the appeal property.

16. Mr Garnett had not provided any evidence to support his argument that Cheltenham was superior to Chester it appeared to be his opinion. The panel noted the Valuation Officer's argument that evidence from the UK Property Market Information Service (PROMIS) PMA retail provision score town rankings, gave rankings for 2015 as follows: Chester Regional

Centre 314; and Cheltenham Regional Centre 292. The panel found that the Boots store in Cheltenham was too far away to be of assistance in this appeal as the two cities are over 100 miles apart and situated in different parts of the country. It could therefore attach little weight to this evidence.

17. The panel turned to the evidence of comparable properties cited by the Valuation Officer, and in particular the BHS store adjacent to the appeal property at 41-45 Foregate Street, Chester, CH1 1HW, which had had a rent review increase to £1,230,000 on 14 April 2013 from a rental of £1,200,000 agreed on 14 April 2008. The store has an area of 7,490m^2 and is assessed at £155m^2 and £1,160,000 Rateable Value. This evidence demonstrated to the panel that there had been a rental increase for a similar large shop of a similar age within Chester in 2013. However, the panel noted that this rent was agreed two years prior to the AVD, and it could therefore attach only moderate weight to it.

18. Mr Garnett argued that this store had closed in 2016 and the property had not been relet since, in his opinion the locality was in decline. However, the panel noted that he also stated that the retail outlet Next had tried to agree a rent on the property after BHS closed down. In any event the panel had to have regard to economic factors as at 1 April 2015.

19. Mr Garnett argued that the appeal property was at a disadvantage because sales are to the ground floor only with a modest standard of fit out. He argued that the sales to stock ratio is approximately 40:50 so the store is top heavy with stock/appurtenant accommodation and the upper floors in the older part of the building had small rooms. The panel found that despite the disadvantages of the upper floors, there was a benefit to have a large ground floor sales area and a wide display frontage. It also noted that despite any disadvantages the appellant had chosen to stay in the property and renew the lease in 2017.

20. Ms Davenport referred to several settlements of larger shops in Chester in the locality of the appeal property: Debenhams Chester, a store of 14,071m^2 had been settled by consent order at £87.50/m^2, this was a much larger multi-floor store; the BHS store, which was set over four floors, was 7,490m^2 and had been agreed at £155/m^2; Marks and Spencer was a store of 11,768m^2 which had been agreed with Mr Garnett at £100/m^2 this store also had excessive storage and staff accommodation; and Wilko which had an area of 2,115m^2 had been settled at £240/m^2. The panel found the evidence of settlements to be the more persuasive evidence. Having regard to the size of the appeal property and with quantum taken into consideration the panel found that a rate of £165/m^2 for the appeal property was fair and reasonable and not out of line with the price/m^2 adopted for other larger and smaller shops within Chester.

21. The panel found that in cases of this nature the burden of proof is on the appellant to satisfy the Tribunal that the appeal should be allowed. In this case the panel was not persuaded by the evidence and arguments put forward by the appellant's representative that a reduction in the assessment was warranted. Therefore, the appeal was dismissed.

Date: 6 February 2024

Appeal number: CHG100800039

Appeal rights:

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.