**VALUATION TRIBUNAL FOR ENGLAND**

*2017 Rating List Appeal appeal: Local Government Finance Act 1988; Challenge against Compiled List entry; Shop and Premises; accuracy of rateable value; allowance or reduction in Zone A rate sought for poor access and visibility; rental and comparable evidence considered; found that weight of evidence supported current zone A rate for location of subject property; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141. Decision: Dismissed.*

APPEAL NUMBER: CHG100814928

RE: 49, Falcon Road, London, SW11 2PH (the "subject property")

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| BETWEEN: | Safedale Limited | Appellant |
| | and | |
| | Andrew Ricketts (Valuation Officer) | Respondent |

SITTING: *remotely using Microsoft Teams*

ON: 2 April 2024

BEFORE: Mr D Greensmith, Presiding Senior Member
Mrs A Taylor, Member

CLERK: Mr J Massey IRRV(Dip)

APPEARANCES: Mr H Edwardes of Altus Group representing the appellant
Miss C Choi representing the respondent

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**DECISION AND STATEMENT OF REASONS**

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## Decision

1. The appeal is dismissed.

2. The Tribunal Panel determined a zone A rate of £400 per m² for the subject hereditament was reasonable and confirmed the RV at £17,750 with effect from 1 April 2017.

## Introduction

3. This was a 2017 Rating List appeal. The subject property had been entered in the 2017 rating list as 'Shop and Premises' at a RV of £17,750 with effect from 1 April 2017.

4. The challenge proposal was submitted by Altus Group on behalf of Safedale Limited and was received by the Valuation Officer on 6 June 2022. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was wrong. An allowance of 15% for poor access was sought, resulting in a revised RV of £15,000 with effect from 1 April 2017.

5. The Valuation Officer issued a challenge case decision notice on 7 August 2023, which stated that based upon the evidence and information available, the rating list entry of £17,750 RV was considered to be reasonable and there would be no amendment.

6. 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 16 November 2023.

7. Mr Edwardes and Miss Choi appeared 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 Edwardes declared that he was instructed on a contingency fee basis. He stated 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 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. The statement of truth signed by Miss Choi confirmed that she was not instructed under any conditional or other success-based fee arrangement.

10. This statement of reasons is not and does not purport to be a full verbatim record of the proceedings.

**Background**

11. The subject property comprised a retail premises situated on the ground floor of a three storey building of masonry construction with a concrete roof in a mixed residential and commercial area in Wandsworth.

12. The survey details and area of the subject property of 64.42$m^2$ (44.73 $m^2$ in terms of zone A (ITZA)) are agreed by the parties.

13. The issue between the parties concerned the RV of the subject property. The appellant's representative had initially proposed a revised RV of £15,000 based on a reduction of 15% to allow for the poor access to the subject property. In the alternative the appellant's representative sought a revised valuation of £10,250 based on a reduced zone A rate

£230 per $m^2$. The respondent defended the current valuation of the subject property at RV £17,750, based on a zone A rate of £400 per $m^2$.

## Evidence and Submissions

14. 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 location maps and photographs of the subject premises and other retail premises in its locality.

15. Mr Edwardes referred to the fact that the subject property was raised from the pavement by approximately 1.5 metres and was accessed either by a small staircase or a disabled ramp nearby and it was set back beneath a canopy resulting in restricted visibility. He considered that an end allowance of 15% should be applied to reflect these disadvantages. He provided a list of comparable properties along with their valuations and photographs where allowances of between 5% and 15% had been applied for what he considered to be similar or less severe disadvantages.

16. There were two retail premises opposite the appeal property with similar access issues and although they had no allowances applied to reflect this, Mr Edwardes considered the disadvantages were reflected in the lower tone of £230 per $m^2$ applied to these two properties. As a result, he considered that the reduced zone A rate of £230 per $m^2$ should be applied to the subject property to reflect its location and the poor access and visibility.

17. Miss Choi considered that the current RV of the subject property was reasonable based on the rent passing on the subject property itself and the rents and assessments of similar retail premises on the same side of Falcon Road as the subject property where there was a higher proportion of retail premises and therefore higher footfall. She did not consider the end allowances applied to the assessments submitted by the appellant were for the same disadvantage as they generally reflect shared access for period buildings in much more prominent retail locations.

## Relevant Law

18. 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
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> reasonably be expected to let from year to year on these three assumptions –
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> 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".

19. 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).

20. 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 1 April 2017.

**Discussion**

21. The appellant 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.

22. The respondent had referred to the rent of £32,400 per annum (pa) for the subject property payable from 1 March 2007 on a new lease and agreed for the same sum on a lease renewal effective from 1 May 2021. The appellant's representative stated the initial lease was signed in 2009 and the renewal was in December 2020. Either way, Mr Edwardes stated both agreements were more than five years from the AVD and did not reflect open market rents at the AVD. He also considered that the appellant is a special purchaser as it trades as a pharmacy and the subject property is next door to a medical centre, therefore would be willing to pay more than the market rent to secure such a location. Neither party considered that the rents agreed on the subject property held any weight in considering its open market rent at the AVD.

23. The appellant described the location of the subject property in a parade of three units, stating that it was the only retail unit in the parade, and the other two units would not suffer the same disadvantage of difficult access and poor visibility as they were both medical facilities. Whilst the two retail units opposite the subject property at 84 and 86 Falcon Road were accessed via steps but had no allowance applied to reflect this, he considered that the disadvantage of poor access was reflected in their lower zone A rate of £230 per $m^2$.

24. The respondent referred to the assessment of retail premises on Falcon Road, where the odd numbers were assessed at £400 per $m^2$ and the even numbers at £230 per $m^2$. She had visited the premises and stated the retail units were predominantly located on the 'odd' side, resulting in a higher footfall and that this explained the differential in rents on either side of the street.

25. The panel noted from the rental evidence that the April 2012 rent on 69 Falcon Road had analysed to £349.73 per $m^2$ and the December 2012 rent on 71 Falcon Road had analysed to £387.98 per $m^2$. It considered that given the rental movement between 2012 and the AVD that theses rents supported the zone A rate of £400 applied to retail premises on the odd numbers side of the street. 76 Falcon Road was let on a new ten-

year lease from 29 April 2015, and its agreed rent of £11,000 pa analysed to £289.11 per $m^2$ which the panel considered demonstrated the differential in rents between the two sides of the street. It was therefore satisfied that the zone A rate of £400 applied to the subject property was reasonable.

26. Mr Edwardes considered the end allowances applied for the following properties supported an allowance of 15% for the subject property;

54, Fairfield Street, London, SW18 1DY - 15.00% Permanent Disadvantage
Bst & Grd Flr 26, Conduit Street, London, W1S 2XX - 12.50% Access
27, Conduit Street, London, W1S 2XZ - 12.50% Access
Grd Flr 10, Maddox Street, London, W1S 1PF - 5.00% Access
183, Dawes Road, London, SW6 7QP - 10.00% Access
Bst & Gnd Front 312, Wandsworth Bridge Road, London, SW6 2UA -10.00% Access
71, Walton Street, London, SW3 2HT -10.00% Access
Bst-Mezz Flrs 12, Bridge Street, London, SW1A 2JX -10.00% Access
11, Bridge Street, London, SW1A 2JR -10.00% Access / Layout

27. The panel noted that these properties appeared to suffer from various disadvantages, such as being set back from other shops, being accessed by steps, and having shared access with either residential premises or other retail premises. The panel noted however that none of Mr Edwardes' comparable properties were in Wandsworth, and in general they were in more prominent retail areas with higher footfall. The panel did not consider that the disadvantages suffered by the subject property were comparable in effect to those exhibited at the properties for which an allowance had been applied.

28. The panel did not therefore consider that the appellant's comparable demonstrated that an end allowance was applicable to the subject property.

**Disposal**

29. In view of the above findings and conclusions, the Tribunal panel was satisfied that the current RV of £17,750 was reasonable and dismissed the appeal.

**Date issued to parties:** 18 April 2024

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## 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.

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