THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 rating list appeal; shop and premises; zone A price in dispute; rental evidence; comparable assessments; appeal allowed in part.

RE: North Eastern Co-operative Society Ltd, Derwent Street, Chopwell NE17 7HZ

APPEAL NUMBER: CHG100826052

BETWEEN: North Eastern Co-operative Society Limited (Represented by Colliers International) — Appellant

and

Amanda Hitchings (Valuation Officer) — Respondent

PANEL: Mrs J Hadley (Presiding Senior Member)
Mr M Bhatti (Senior Member)

CLERK: Ms J Routledge IRRV Tech

REMOTE HEARING 1 ON: 12 January 2024

APPEARANCES: Mr A Dyson for the appellant

Mr A Crawford for the respondent

Summary of decision

1. Appeal allowed in part. The panel determined a revised rateable value (RV) of £19,500 with effect from 1 April 2017, based upon an unadjusted base rate of £70 per m^2.

Introduction

2. This was a 2017 rating list appeal. The RV of the appeal hereditament was £22,250 with effect from 1 April 2017. This was a compiled list appeal, so the material day was also 1 April 2017. The challenge stage was completed on 8 March 2023. The challenge sought a reduction in RV to £9,750 by way of a reduction in the unadjusted base rate to £35 per m^2.

3. Mr Dyson 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 Dyson explained that he was instructed on a fixed fee basis and he declared that he understood and accepted his duty 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.

4. Mr Crawford who appeared on behalf of the Valuation Officer (VO) also stated he was acting in a dual role capacity, as expert witness and advocate.

5. 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.

6. The appeal hereditament was a convenience store spread across the ground and lower ground floor, located in the village of Chopwell, eleven and a half miles from Newcastle. It measured 384.90m^2 and was valued using an unadjusted base rate of £80 per m^2. It had occupied the site since 1997 and was subject to a lease with upward only five yearly rent reviews.

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

Issue

8. The issue for the panel to consider was the correct RV to be ascribed to the assessment.

Evidence and submissions

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

Decision and reasons

10. In arriving at a decision, the panel is governed by rating legislation laid down by Parliament where Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999, provides that:

    2(1)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.

11. 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).

12. 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.

13. The panel heard from Mr Dyson that in the 2010 list the RV was 42.50 per m^2, considerably less than the current assessment of £80 per m^2 . An end allowance of 3% had been allowed for size and quality in the 2010 list which had been

removed in the current list. It was submitted an increase of 88% was excessive as the passing rent had not increased by such a large percentage.

14. Mr Crawford advised that the increase may have reflected the fact that the subject property was undervalued in the previous list.

15. The clerk referred the panel to Lamb v Minards (VO) (LVC/345/1973) where the following observations were made:

    'Entries in the old valuation list are not good evidence for determining value in the current list' and

    '…market forces operating today were entirely different from those in force when the tone of the old valuation list was established'.

16. The panel accepted that the assessment of the property in the 2010 list was not material to this appeal as the lists were independent of each other and therefore the previous assessment could be given no weight.

17. Mr Dyson advised that when the challenge was submitted the rent review for 2015 had not been resolved, the appellant had continued to pay the passing rent from the 2010 review of £7,000 per annum. It had now been agreed that the 2015 rent review increased the rent to £9,300 per annum which analysed to £33.32 per m^2. Mr Dyson submitted that this rent review had taken eight years and was negotiated by independent practitioners and could be relied upon as an open market rent. The length of time it took to negotiate and the level of increase indicated there had been little rental growth. He submitted the 2022 renewal had now been agreed at £11,000 per annum which also supported a lack of growth over the previous seven years.

18. Mr Dyson also observed that the retail units in the immediate vicinity were independent small businesses and the RV on these was £75m^2, as these were small businesses they were given rate relief.

19. Mr Crawford advised that the assessment gave no weight to the passing rent which had been agreed in 2010 as it was too remote from the AVD and the rent review had not been completed at AVD for the 2017 list. At the time of the challenge the rent review had not been concluded.

20. Mr Dyson identified nine comparable premises, arguing that these were better comparable properties than the VO comparable properties as the areas surrounding these shops was similar to the subject premises, they ranged between eleven and fifty four miles from the subject property. The sizes ranged between 242.84m^2 to 530.8 m^2 with values between £40 per m^2 and £60 per m^2. No lease or rental renewal information was provided for these properties.

21. The VO had also provided nine comparable premises that were between four and a half miles to almost nineteen miles away. The sizes ranged between 122 m^2 and 511m^2, with values between £70 per m^2 and £145 per m^2. Mr Crawford argued these were more relevant as they were closer and therefore reflected the locality more accurately. The area was quite rural and many of the comparable properties were in small villages. These properties were similar in class of occupation, size and age.

22. Mr Dyson argued that the VO comparable properties were in better locations and many had car parking facilities whereas the subject property had no onsite parking and there was little unrestricted parking nearby.

23. Mr Crawford advised that there were car parks attached to some of the comparable properties, however this was reflected in the RVs of these properties.

24. The panel considered all of the arguments and evidence submitted by the parties. It also had regard to the propositions in *Lotus & Delta.* These propositions provide guidance on the usefulness of different types of evidence but they should not be regarded as rules to be followed slavishly. It will be necessary to have regard to relevant evidence of all types, if available, but always with a clear focus on the statutory valuation hypothesis.

    (i) Where the hereditament which is the subject of consideration is actually let, that rent should be taken as a starting point.
    (ii) The more closely the circumstances under which the rent was agreed both as to time, subject matter and conditions, relate to the statutory assumptions, the more weight should be attached to it.
    (iii) Where rents of similar properties are available they too are properly to be 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 hereditament.
    (iv) Rating assessments of other comparable properties are also relevant. When a valuation is prepared these assessments are to be taken as indicating comparative values as estimated by the valuation officer. In subsequent proceedings on that list therefore they can properly be referred to as giving some indication of that opinion.
    (v) In light of all the evidence an opinion can then be formed of the value of the subject hereditament, the weight to be attributed to the different 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.
    (vi) In cases where there is no evidence of rents of comparable properties, a review of other assessments may be helpful, but in such circumstances, it would clearly be more difficult to reject the evidence of the actual rent.

25. In accordance with the above the panel had regard to the passing rent, which at AVD was that agreed in 2010 and therefore was too far removed from the AVD to be given weight. The rent review due in 2015 was not agreed until 2022 which

was again at some distance from the AVD. The panel also had regard to the fact that this was a rent review and the appellant was a long standing tenant therefore in the panel's opinion the passing rent carried less weight. The panel therefore had regard to the rents on similar properties to establish whether the RV was reasonable.

26. The comparable properties identified by the appellant were a considerable distance from the subject property and no rental information was provided. The comparable properties relied upon by the VO were closer but some had car parking and were said to be in better more affluent locations. The panel noted that most of the comparable properties identified by the parties were not the only large retailer in the locality as was the case with the subject property. It also noted that the small businesses within the village of Chopwell had RV's of £75 per m^2 which indicated an overall tone for the village.

27. The panel attached more weight to the hereditaments located closest to the subject property. The properties within a ten mile range increased in RV the further they were from the subject property, with the exception of the Co-op Foodstore, The Leaze, which was £150 per m^2. The properties 18/19 The Leazes, Burnopfield at £75 per m^2 and Spar (Ground Floor) Church Street at £70 per m^2 were the closest in distance and therefore the panel found to be the best evidence of rental values in the locality. Therefore, the panel concluded that £80 per m^2 for the subject property was excessive.

28. In conclusion, to better reflect the established tone of the immediate locality and reflecting the lack of parking, the panel found that the RV of the subject property should be reduced to £70 per m^2 .

Floor	**Description**	**Area (m^2)**	**Price (psm)**	**Total**
Ground	Retail Area	167	£70	11,690
Ground	Fridge	7.6	£70	532
Ground	Office	3.9	£70	273
Ground	Internal storage	71.6	£70	5,012
Ground	Mess/Staff room	9.1	£70	637
Ground	Cloaks	2.6	£70	182
Ground	Staff Toilets	2.8	£70	196
Ground	Staff Toilets	2.8	£70	196
Ground	Loading Bay	25.0	£ 7	175
Lower Ground	Internal Storage	70.7	£ 7	495
Lower Ground	Drive In	15.5	£ 7	108
Lower Ground	Boiler Room	6.3	£ 7	44

	TOTAL			**£19,540**
				Rounded down to £19,500

29. The appeal was therefore allowed in part.

30. The appellant is entitled to a full refund of the fee paid in accordance with regulation 13E(1)(a) of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009 (as amended).

Order

31. The Tribunal orders, pursuant to Regulation 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (England) Regulations 2009 [SI 2009 No 2269] that the respondent shall alter the 2017 list in respect of within two weeks, to £19,500 RV with effect from 1 April 2017.

Date: 5 February 2024

Appeal number: CHG100826052

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.