THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 Rating List appeal; shop and premises; value relativity of the first floor retail area; rental evidence; comparable assessments; appeal dismissed.

RE: (Incl 1st Flr 48) Pt Bst-1st Flrs 44 Regent Street, London, W1B 5RA

APPEAL NUMBER: CHG100838337

BETWEEN:	Boots UK Limited	Appellant
	and	
	Mr A Ricketts (Valuation Officer)	Respondent

PANEL: Mr K Sheth, (Presiding Senior Member)
Ms C Caiquo, (Senior Member)

CLERK: Ms R Muller

REMOTE HEARING ON: Thursday 15 February 2024

APPEARANCES: Mr J Taylor from G L Hearn, representing the Appellant as expert witness
Mr Waller from G L Hearn, representing the Appellant as advocate
Mr N Green, representing the Respondent

Summary of decision

1. Appeal dismissed. The panel held that the rateable value (RV) of £2,040,000 for (Incl 1st Flr 48) Pt Bst-1st Flrs 44 Regent Street, London, W1B 5RA (hereafter, known as the subject hereditament) was reasonable.

Introduction

2. This is a 2017 rating list appeal. The subject hereditament had been entered in the 2017 rating list as ‘shop and premises’ at a RV of £2,280,000 with effect from 16 May 2018.

3. The challenge proposal was submitted by G L Hearn on behalf of the Appellant: Boots UK Limited, which had been received by the Valuation Officer (VO) on 5 August 2022. It had been made on the grounds that the RV shown in the rating list on 16 May 2018 was inaccurate. A revised RV of £1,890,000 was proposed with effect from 16 May 2018.

4. The VO following an agreement with a neighbouring hereditament, reduced the RV of the subject hereditament to £2,040,000 with effect from 16 May 2018, based a reduction in zone A from £7,000 per m² to £6,250 per m². However, an allowance or adjustment to the value relativity of the first floor retail area due to its size had not been applied.

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 23 May 2022.

6. Mr Waller appeared on behalf of the Appellant as advocate and Mr Taylor appeared on behalf of the Appellant as expert witness, the clerk asked if there was a success related fee involved and if so whether its existence was compatible with his obligations to the Tribunal as an expert. This question was raised in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson* (VO) [2018] UKUT 0253 (LC).

7. Mr Taylor declared that he was not instructed on a conditional fee basis. He confirmed 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. 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 in England).

8. The panel, therefore, considered the "expert" evidence and attached such weight to it as it saw fit.

9. Mr Green, the representative for the Respondent confirmed that he was appearing in a dual role capacity as both expert witness and advocate.

10. The appeal hereditament was a shop, which was situated on the north side of Piccadilly Circus in Central London. It was within the south part of Regent Street and was close to Central London's major shopping and entertainment areas. The accommodation comprised of basement and first floor storage facilities, with ground floor retail space, which had a total area of 1,852.7 m² with a zone A value of £6,250 per m².

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

Preliminary issue

12. Due to the revised RV of the subject hereditament's zone A value. The Appellant's representative revised the proposed RV and requested that the panel confirm a revised RV of £1,900,000 with effect from 16 May 2018.

13. The panel noted that both parties were happy to proceed with the appeal based on the revised proposal submitted by the Appellant's representative.

Issues

14. The issue for the panel was whether an adjustment of the value relativity of the first floor retail area was warranted.

Evidence and submissions

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

Decision and reasons

16. 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.

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 was 16 May 2018, the date the subject hereditament had re-entered the 2017 Rating List as the entry had been taken out of the 2017 Rating List previously due to working being carried out. The panel had been informed that the Appellant had been in occupation of the subject hereditament since the 1990's.

19. Mr Waller had referred specifically to *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141. The panel was aware that this was a leading judgment which had set out six propositions to be followed when considering the weighting of evidence. The starting point was the subject rent. Consideration of how the time, subject matter and conditions related to the statutory requirements was required in order to determine how much weight should be attached to the subject rent. The remaining propositions required consideration of the rents of similar properties and comparable assessments. In light of all the evidence an opinion could then be formed.

20. The subject hereditament was subject to a lease renewal, which had taken place on 26 August 2014 with a rent passing from 26 August 2014 with a 12 months' rent free period had been included. Mr Taylor stated he had taken out three months for fit out, which had analysed the rent at £1,912,500. He stated that the area of the subject hereditament in terms of zone A (ITZA) was based on the current VO relativities. This had analysed to circa £5,925 per m².

21. Mr Taylor had provided a neighbouring hereditament as a comparable property. Bs, Grd & Mezz Flr 48 Regent Street, London W1B 5RA. It had originally been valued at £7,000 per m², which had been the same as the subject hereditament. However, this had been reduced by way of Challenge to £6,250 per m² zone A. The rent at this property had been considered as part of this reduction.

22. Mr Taylor described the layout of the subject hereditament, stating that the ground floor had an area of 418.67 m², whereas the first floor had an area of 1,021.09 m², making the first floor 'top heavy'. Therefore, even though there was an escalator from the ground floor to the first floor, an allowance should be provided to reflect this, an adjustment of the relativity of the first floor retail area should be granted.

23. He has stated originally within the evidence that he had considered two ways to reflect this discount. One was an end allowance for quantum and the other related to the relativity (A/X) applied to the first retail area. At this current time, the first floor space had been valued on a A/8.264 basis. Mr Taylor stated that an uplift had been applied to reflect the location of the stairs/escalator to the first floor. However, he also stated that the rental analysis did not suggest this uplift was appropriate. Therefore, he was of the opinion that the first floor retail area should be valued on the A/10 basis.

24. The panel noted that no layout plans had been provided by either party. A location map had been provided where the subject property had been highlighted in blue. The panel discussed the layout of the subject property with the parties. The panel accepted that the first floor of the subject property was 'top heavy'.

25. Mr Taylor stated that it was not normal for occupiers to occupy a property where the first floor was 'top heavy'. An occupier of a property prefers a 'bottom heavy' unit on the ground floor. He stated that if there had not been an escalator, then A/10 for the first floor retail area would be appropriate. However, as the first floor was 'top heavy' Mr Taylor requested an adjustment to A/10 from A/8.264 to take this into account with regards to the subject hereditament.

26. Mr Green stated that if the subject hereditament had not had an escalator, he would have provided an end allowance to reflect this. However, he did not consider the fact that the first floor was ‘top heavy’ should automatically warrant an allowance or a reduction in the first floor retail area price for the subject hereditament.

27. The panel asked the VO how common it was to grant an allowance for ‘top heavy’ properties. The VO stated that he had not come across this situation before. The VO also confirmed that it was not common to grant an end allowance for size. He stated that an allowance would have already been provided in previous lists if it had been warranted. This had not been granted within the 2010 Rating List with regards to the subject hereditament.

28. The case of *Barnard & Barnard v. Walker* (VO) [1976] had been mentioned at the hearing by Mr Green. Therefore, the clerk issued a copy of this case to both parties and the panel post hearing. However, Mr Taylor had confirmed during the hearing that he did not want to pursue an end allowance with regards to the subject hereditament and did not place much weight on the details of this case.

29. The rental details in respect of the subject hereditament was subject to too many adjustments. The rent could also not be relied upon as an open market rent, as the occupier had been in situ since the 1990’s.

30. The panel considered the question as to whether the subject property’s first floor retail value should be considered to be A/8.264 or adjusted to A/10 as requested by the Appellant’s representative. The panel held that it did not consider the ‘top heavy’ first floor to be a disadvantage with regards to the subject hereditament, as insufficient evidence had been provided to support an adjustment of the value relativity for the first floor retail space. Therefore, the panel upheld the first floor retail value at A/8.264 and dismissed the appeal.

Date: 8 March 2024

Appeal number: CHG100838337

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.