THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeal; Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141; *Shop and premises; zone A value; appeal allowed in part.*

RE: Ground Floor 21-27 South Walk, Yate, Bristol BS37 4AU

APPEAL NUMBER: CHG100850927

BETWEEN:	T J Morris Ltd	Appellant
	and	
	Ms L Formela-Osbourne (Valuation Officer)	Respondent

PANEL: Ms C Jones (Senior Member sitting on her own)

CLERK: Mr R Gath IRRV Hons

REMOTE HEARING on 24 January 2024

APPEARANCES: Mr A Allen from The Beattie Partnership (Appellant's representative);
Mr R Albert (Valuation Officer's representative)

Summary of decision

1. Appeal allowed in part. The panel concluded that the appeal property should be valued using the zoning method at a zone A rate of £575/m^2, but with a 20% allowance for quantum. The resultant rateable value (RV) was £183,000 effective from 29 October 2018.

Introduction

2. The appellant had made a challenge against the rateable value on the 2017 Rating List, by way of a proposal that he served on the Valuation Officer (VO) on 7 September 2022. The proposal was against the VO's notice of alteration to the 2017 rating list. After considering the proposal and evidence submitted during the challenge period, the VO decided that the proposal was not well founded. A decision notice to that effect was served on the appellant on 13 February 2023 and his representatives then appealed the VO's decision to the Tribunal on 12 June 2023 on the grounds that the current valuation for the

hereditament was not reasonable, under Regulation 13A of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009.

3. The appeal property was valued as a shop and premises. It had a Net Internal Area (NIA) of 1,241.06m², 389.24m² in terms of zone A (ITZA).

4. The appeal property is a Home Bargains store located in an established shopping centre with nearly 100 retailers. It has a central core where all four walkways meet. East Walk is the busiest as it has a superstore and the majority of the parking was at the end of it. There is a Wetherspoons at the end of South Walk. West Walk has the only public toilets in the shopping centre which leads to the leisure centre and the NHS walk-in centre.

5. Mr Allen appeared on behalf of the appellant as both advocate and expert witness. However, he was not employed on a success related fee but employed by The Beattie Partnership as a consultant. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Allen's declaration of truth included a statement that he understood and accepted that his duty is to the Tribunal in giving his evidence and he will comply with this as well as the requirements of his professional body regardless of whether or not the evidence supports his client's case.

6. The panel accepted this expert witness evidence on the above basis as the appeal is not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure regulations and is 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).

7. Mr Albert confirmed that he was representing the VO as advocate and expert witness.

8. I heard this appeal alone as the Tribunal's business arrangements permit me to do so.

9. This document is not and does not purport to be a full verbatim record of proceedings.

Issue

10. The issue in dispute was the correct value to be applied to the appeal property. Mr Allen had sought a reduced entry of £139,000 RV based on a main space rate of £106/m^2 or an unadjusted zone A rate of £575/m² with a 40% allowance for quantum.

Evidence and submissions

11. The evidence bundle before the panel comprised all of the evidence disclosed and exchanged during challenge which included the parties' comparable properties, a location map, photographs of appeal property and their skeleton arguments.

Decision and reasons

12. In the case under consideration, the competing evidence was analysed having regard to the authoritative guidance in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA141. The rent on the subject property is considered to be the correct starting point but, where available, rents on similar properties are also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence can then be weighted.

13. The rent for the appeal property was agreed in 2018, initially on a 15 year lease which included a two year rent free period. Mr Allen had analysed this to £76,527. He also adjusted the rent by 4.5% which was the difference between the 2023 and 2017 rating lists and used this to calculate the rent to £90,000 as of 1 April 2015. However, the panel applied little weight to the rent as it was too far from the AVD to be reliable. Although the panel understood Mr Allen's calculation, as there was a two year rent free period, the more adjustments that are required, the less reliable the rent becomes.

14. Mr Allen argued that the RV did not appear to be correct as it was initially £242,000 when the ground and first floor were combined. However, since the ground floor had been split from the first floor, the RV had only reduced to £224,000 and this anomaly was due to the VO deciding to value the appeal property using the zoning method.

15. He submitted that to prevent this anomaly, the appeal property should be valued using the overall basis rather than using the same zoning method as smaller shops in the locality.

16. Mr Allen further argued that the VO's scheme for the shopping centre (which stated that only properties with an area over 1,850m^2 should be valued using the overall basis), was not legally binding. He also produced a number of other Home Bargains properties which ranged in size from 492m^2 to 2,293m^2 which had been valued on an overall basis.

17. He then argued that if the appeal property was zoned, a 40% quantum allowance should be awarded to produce what he considered to be a reasonable assessment, equivalent to the RV if it was valued on an overall basis and in line with the rent. To further support this level of quantum allowance he produced a list of Home Bargains assessments which had been given a quantum allowance which varied from 5% to 40%.

18. Mr Allen also disagreed with the VO referring to the RSA report and the subsequent values that had been agreed amongst the representatives for shops within the shopping centre, as he had not been part of those discussions.

19. Mr Albert explained that when the appeal property had included the first floor, the total area was 2,285.90m^2. When it was split, the total area was 1,241.06m^2 and as it was not considered to be a large shop, it had been valued using the zoning method.

20. He also contended that a tone of value of £575/m^2 had been established for properties within that part of South Walk and therefore the zone A rate was consistent with other properties.

21. Turning to the quantum allowance, the VO did not consider that an allowance of 40% was appropriate. Although some of the shops in the locality had been given a 2.5% allowance, he considered that there was no evidence for the VO to justify an allowance of 40%.

22. Given the above, the panel considered that the appeal property should be zoned with a zone A rate of £575/m^2. The majority of the shops in the locality had been valued using this method and the value of £575/m^2 was also the settled tone for that locality. Furthermore, it was in line with the VO's scheme.

23. Although the panel accepted that the VO's schemes was not legally binding, the panel concluded that it should not deviate from the VO's scheme unless the evidence suggested otherwise. Although Mr Allen had provided a list of properties that were valued on an overall basis, no evidence had been presented to demonstrate if other units in those localities had also been valued on an overall basis.

24. Turning to the quantum allowance, the panel was not wholly convinced that a 40% allowance should be awarded as only one property on Mr Allen's list had been granted an allowance of that size, and none were within the locality. The VO had accepted that an allowance of 2.5% should be granted but no evidence had been presented to the panel to show how the VO had arrived at that amount.

25. The panel decided that an allowance of 20% should be granted to reflect the unit being larger than most of those in the shopping centre and to reflect that some of the properties on Mr Allen's list had been granted a quantum allowance of either 20% or slightly less.

26. The valuation is set out below:

Description	**Area**	**Rate/£**	**Value**
Retail zone A	170.68	575.00	98,141
Retail zone B	171.32	287.50	49,255
Retail zone C	171.32	143.75	24,627
Remaining retail zone	720.56	70.09	50,504
Staff toilets	N/A	0.00	0
		Sub total	222,527
Air conditioning system	1,053	7.00	7,371
		Sub total	229,898
		Less 20% allowance for size	45,980
			183,918
		Rateable value say	183,000

Order

27. Under the provisions of regulation 38(4) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the

Valuation Tribunal for England orders the Valuation Officer to reduce the entry in the rating list to rateable value £183,000 with effect from 29 October 2018.

28. Under regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

Refund of appeal fees

29. The Appellant is also 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).

Date: 7 February 2024

Appeal number: CHG100850927

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.