THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; shop and premises; price per m^2 in dispute; rental evidence; comparable assessments; appeal dismissed.

RE: Boots, 1 Queens Head Passage, London EC4M 7DZ

APPEAL NUMBER:	CHG100858342	
BETWEEN:	Boots Limited	Appellant
	and	
	Mr A Ricketts, Valuation Officer	Respondent
PANEL:	Ms J Hadley (Presiding Senior Member) Mr D Gardner (Senior Member)	
CLERK:	Ms J Routledge	
REMOTE HEARING ON:	15 September 2023	
APPEARANCES:	Mr A Waller, representing the Appellant Mr W Secrett expert witness for the Appellant Mr G Emery representing the Valuation Officer	

Summary of decision

1 Appeal dismissed. The panel confirmed the rateable value (RV) of £188,000 with effect from 1 April 2017.

Introduction

2 This is a 2017 rating list appeal. Boots, 1 Queens Head Passage, London EC4M 7DZ, (the ‘appeal property’) had been entered in the 2017 rating list as ‘shop and premises’ at a rateable value (RV) of £188,000 with effect from 1 April 2017.

3 The challenge proposal was submitted by GL Hearn on behalf of Boots Limited and was received by the Valuation Officer on 12 April 2023. It had been made on the grounds that the RV shown in the rating list on 1 April 2017

was not reasonable. A revised RV of £147,000 was proposed with effect from 1 April 2017.

4 The Valuation Officer issued a challenge case decision notice on 20 September 2022 which stated that based upon the evidence and information available, the rating list entry was reasonable and there would be no change to the list entry of £188,000 RV.

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 12 April 2023.

6 In the absence of a statement of truth, Mr Waller as advocate and Mr Secrett as expert witness confirmed that GL Hearn was instructed under a contingency fee, and they understood that their duty was first and foremost to the Tribunal. This was in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC).

7 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.

8 The appeal property comprises a basement and ground floor double curved unit, with office accommodation on the upper floors. It is situated at the end of Queens Head Passage with a return frontage on Newgate Street. It is part of the London Stock Exchange which in turn is part of the Paternoster Square development. The present valuation of £188,000 RV is based upon a rate of £1325 per m^2.

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

Issues

10 The challenge proposal sought a revised RV of £147,000 based upon a rate of £1035 per m^2. The issue in dispute was the price per m^2 to be adopted in the valuation. The scheme in which the appeal property was in was also disputed.

Evidence and submissions

11 The bundle comprised all of the documents exchanged between the parties as part of the challenge process: Appellant's challenge submission, initial response to the challenge, challenge further exchange, Valuation Officer's

challenge case decision notice, and Appellant’s supporting evidence statement.

12 Mr Secrett for the Appellant contended that the appeal property was over assessed at £1325 per m^2. He provided the renewal lease for the appeal property, which he argued was based on open market negotiations. The original lease had been granted in May 2004 at a rent of £165,000 and it had been renewed in May 2015 (close to the AVD) at the same rent with a six month rent free period. The analysed rent equated to £1035.96 per m^2 . Mr Secrett argued that a revised Zone A UAR of £1035 should be adopted. He considered the subject rent should be given considerable weight. He considered the lease agreement had taken into account a comparable rent from the unit directly opposite which was sufficient and that, accordingly, the subject rent was the best evidence to rely on when determining the correct RV.

13 Mr Emery for the Respondent argued that the subject rent could not be solely relied upon. He noted it was a renewal and not a new letting, with the Appellant being in the position similar to an anchor tenant. There were a number of restrictions in usage and that the subject property was in a better position than many of the other properties in Queens Head Passage as it had a return frontage on Newgate Street. He provided a number of comparable premises within the locality to demonstrate that the RV was reasonable. With reference to his rental and assessment evidence he asked the panel to confirm the present RV of £188,000 based upon the rental evidence in the Queens Head Passage and comparable premises at 5 and 6 Foster Lane.

Decision and reasons

14 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—
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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.

15 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).

16 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.

17 The panel was guided by the leading judgment in the Lands Tribunal case of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141. The six propositions in this judgment were:

> “(i) Where the hereditament which is the subject of consideration is actually let that rent should be taken as the starting point.
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> (ii) The more closely the circumstances under which the rent is agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of gross value in s19(6) of the General Rate Act 1967, the more weight should be attached to it.
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> (iii) Where rents of similar properties are available, they too are properly 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 property.
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> (iv) Assessments of other comparable properties are also relevant. When a valuation list 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 be properly referred to as giving some indication of that opinion.
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> (v) In the 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.
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> (vi) In those cases where there are no rents available 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.”

18 The panel noted that the original lease was granted in 2004 at a rent of £165,000 with a review in 2009 which resulted in no rent increase. The lease was renewed on 28 May 2015 and therefore close to the AVD. However, there was no rent increase despite the length of time since the original lease was granted. The panel noted that the rents for properties in Queens Head Passage once analysed exceeded the analysed rent on the appeal property.

The panel recognised that there were restrictive covenants within the appeal property lease but was of the opinion these would have little effect on the rental value of the appeal property as these restrictions were common in central London.

19 The panel having had regard to the first proposition in *Lotus and Delta,* that the subject rent is the starting point found that the weight to be attributable to the renewal lease was diminished by the lack of an increase in the rent over a prolonged period. The panel considered this cast doubt on the lease being an open market arrangement. The panel was mindful of the fact that this was a lease renewal and felt that the argument that Boots was likely to be an anchor tenant was credible. Furthermore, the email produced by the Appellant which explained the valuation exercise undertaken at the time of the lease renewal stated that the valuer had only considered one comparable property. The panel did not think that was sufficient to demonstrate it was an open market arrangement. Therefore, the weight to be placed on the appeal property rent was reduced.

20 The panel went on to assess the other comparable properties in order to form an opinion on the value of the appeal property by reference to these properties.

21 There was no basket of evidence presented to the panel by the Appellant's representative to support the subject property rent, it was offered as the single source of evidence for the valuation of the appeal property.

22 Mr Emery provided evidence of five comparable rents in Queens Head Passage and two further agreements on 5 and 6 Foster Lane close to St Paul's underground station, which have been settled at £1200m^2. He stated that these two retail units were in an inferior location to the appeal property and the agreements reached supported the tone for the appeal property.

23 The panel had regard to the rental evidence in respect of other properties in the vicinity of the appeal property that were in the same mode or category of shop and premises. Whilst there were some differences in their size and they were mid-terrace with a single frontage, the panel found that they did constitute a basket of evidence and provided comparable evidence useful in the valuation of the appeal property.

24 The rental agreements were a mixture of new leases and renewals within two years of the AVD. All of them were for analysed rental amounts higher than the rent of the appeal property. The panel found the appeal property rental arrangement to be an outlier, not representative of the market and that this was most likely attributable to the strong negotiating position held by the Appellant as a sitting tenant occupying a large retail unit. Less weight was therefore attached to the appeal property rent.

25 The panel considered the increased rateable value of the appeal property a reasonable reflection of the fact it had a return frontage on Newgate Street. The comparable properties were all smaller mid-terrace and did not enjoy the

increased footfall of the appeal property which was situated at the end of the Passage benefitting from visibility on two streets.

26 In the submission it had been argued that the appeal property was in the wrong scheme. The panel noted that scheme 347487 was for "shops in the Paternoster Square area of City of London and included the shops bordering the development" including Queens Head Passage. The second scheme was 387575 which included "shops that are situated in the City of London that are not located in a specific shopping area. These could be in small clusters or individually situated." The panel found that the appeal property appeared to fit best into the second scheme as a large named brand shop, within a small cluster of dissimilar shops and at the furthest end of the passage from Paternoster Square with a frontage on Newgate Street. Therefore, the panel found the appeal property was in the correct scheme.

27 The panel found that, in cases of this nature, the onus was on the Appellant to prove its case. The panel found that its case had not been proven but there had been sufficient evidence to show that the current RV of the appeal property was not excessive and was reasonable given the basket of evidence submitted for other similar properties within its locality.

28 Accordingly, the appeal was dismissed.

Date: 3 October 2023

Appeal number: CHG100858342

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.