VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeals; betting shop and premises; unadjusted rate in dispute; analysis of rent on comparable properties; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal dismissed.

APPEAL NUMBER:	CHG100876485
RE:	Grnd Flr & Bsmt, 568-570 Barking Road, London E13 9JU (the "subject property")

BETWEEN:	Power Leisure Bookmakers Ltd	Appellant
	and	
	Mr A Ricketts (Valuation Officer)	Respondent

SITTING:	*remotely using Microsoft Teams*
ON:	29 April 2024
BEFORE:	Mr M Aslam, Presiding Senior Member Mr WJ Read, Senior Member
CLERK:	Miss F Willson IRRV(Dip) BA(Hons)
APPEARANCES:	Mr A Waller (on behalf of the appellant) Ms V Paramasivam (on behalf of the respondent)

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The Tribunal Panel confirmed a rateable value (RV) of £34,250 for the subject property with effect from 1 April 2017.

Introduction

3. This is a 2017 rating list appeal for the subject property which was entered in the 2017 rating list as ‘betting shop and premises’ at an RV of £34,250 with effect from 1 April 2017. The challenge proposal was submitted on 7 November 2022. The challenge sought a revised assessment of £29,000 RV with effect from 1 April 2017. The Valuation Officer (VO) determined that it was not well founded and issued a challenge case decision notice on 11 July 2023. The appellant submitted an appeal on 8 November 2023.

4. Mr Waller appeared on behalf of the appellant as both advocate and expert witness. Therefore, it was important to ascertain 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). Mr Waller confirmed that he was not instructed under a contingency fee and he declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and that he would comply with this as well as the requirements of his professional body, regardless of whether or not the evidence supported his client’s case.

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).

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

7. The subject property is a ground floor shop in a two storey building within a parade of retail units on Barking Road in Newham which is a local high street and has good transport links. It has an agreed total area of 138.60m^2 or an in terms of man space (ITZA) of 75.58m^2

8. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, this appeal was received by the Tribunal on 8 November 2023.

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

Background

10. The issue between the parties is whether the appeal property should be valued at an ITZA of £445/m^2 as submitted by the VO or an ITZA of £375/m^2 as submitted by the appellant’s agent.

Relevant Law

11. The panel is governed by Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999, which 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.

12. 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).

13. 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

14. Mr Waller referred the panel to the rent on the subject premises as this is considered to be the starting point of assessing the RV of a property in accordance with the leading case of *Lotus and Delta*. The rent passing at a rent review dated November 2014 was £28,500 per annum. Mr Waller submitted that the rent payable under a rent review was a nil increase and was only a few months before the AVD. With a passing rent of £28,500 it analysed to £377.06/m^2. This supported that an RV of £34,250 was unreasonable. It also supported an ITZA of £375/m^2. The 2010 ITZA on the subject property was £365/m^2 and hence there had been an increase from the 2010 list to the 2017 list of £80/m^2 which did not reflect the rental market for retail unts in the area which was not particularly buoyant around the AVD for the 2017 list. Further the parade of shops next to the subject premises, which was in Mr Waller's opinion in a superior position, had the same ITZA applied to them in the 2017 rating list as in the 2010 list.

15. Mr Waller referred the panel to two comparable properties in the vicinity of the subject property which both analysed to less than £445/m^2 applied to the subject property :

(1) 545 Barking Road a restaurant and premises with an effective date of rent of 25 April 2015 and a rent of £18,000 per annum and an ITMS of 39.90m^2. This analyses to £417.29/m^2.
(2) 533 Barking Road is a shop and premises with an effective date of rent of 1 August 2015 and a rent of £25,000 per annum. It has an ITMS of 57.07m^2 which analyses to £422.71/m^2.

16. Mr Waller submitted that in connection with the VO's comparable properties they were in a different parade of shops to the subject property and were located on the busiest area of the road close to the Tesco Express. This meant that they did not support an ITZA rate of £445/m^2

on the subject property which is located in a less favourable location on the road. The subject property was in a less favourable part of the street because it was further away from the Tesco Express and had a bus lane with a double yellow line in front of it and so there was no parking outside it.

17. Mr Waller submitted that he had visited the subject property and found that the footfall close to the Tesco Express was higher than in the vicinity of the subject property. The respondent submitted that when she visited the subject property there was, in her opinion, no difference in footfall on her own observation. Neither side had adduced corroborating evidence and hence the panel attached no weight to either argument.

18. Ms Paramasivam submitted that the rent on the subject property had not been increased for over ten years as the appellant was a national company and they would be likely to receive favourable terms from a landlord. On questioning she did however acknowledge that she had provided no evidence of this. In her view the passing rent on the subject property was not a true open market rent.

19. Ms Paramasivam then referred the panel to the following comparable properties which she submitted supported the ITZA of £445/m^2 for the subject property:

(1) 524-526 Barking Road which is a post office and has an ITMS of 62.95m^2. It has a new letting with an effective date of 27 October 2015 and has a passing rent of £30,000 per annum which analyses to £462.27/m^2.
(2) 545 Barking Road which is a restaurant and has an ITMS of 39.90m^2. There was a rent review on 23 April 2015 with the rent agreed at £18,000 per annum. This rent analysed to £417.29/m^2.
(3) 564 Barking Road which is a shop and premises with an ITMS of 20.46m^2. It had a new letting on 15 March 2015 one month prior to the AVD. The rent agreed was £13,200 per annum and this analyses to £645.16/m^2. Mr Waller, however, stated that the rent on this property included an upper residential floor and so should carry less weight.
(4) The VO had supplied a list of 12 other properties on either side of the parade where the subject property was situated on Barking Road which all had an adopted value of £445/m^2 applied which supported that a tone had been set for the area.

Disposal

20. The panel concluded that the appellant's representative had not successfully demonstrated that the subject property should be assessed with an ITZA at £375/m^2. The VO's comparable properties demonstrated a tone had been established for the area which supported the ITZA of £445/m^2. The panel found that the rent on the subject property and number 533 Barking Road were particularly persuasive as they were similar in size and 533 Barking Road had a new letting only four months after the AVD which analysed to £422.71/m^2 and therefore supported the tone of £445/m^2. The present valuation of £34,250 RV was therefore confirmed. In view of the above findings and conclusions, the Tribunal Panel dismissed the appeal.

Date issued to parties: 15 May 2024

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.