VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List appeal: shop and premises; Lotus & Delta Ltd v Culverwell (LO) and Leicester City Council [1976]; rental evidence; assessments of comparable properties; unadjusted rate in dispute; end allowance for layout in dispute; appeal dismissed.

APPEAL NUMBER:	CHG100897813
RE:	2 Underwood Court, Glenfield, LE3 8SG (the "subject property")

BETWEEN:	Shahin Mitha T/A Ella Convenience Store	Appellant
	and	
	Joanne Moore IRRV (Hons) (Valuation Officer)	Respondent

SITTING:	*remotely using Microsoft Teams*
ON:	24 June 2024
BEFORE:	Ms J Hopkinson (Presiding Senior Member) Ms S Bains (Senior Member)
CLERK:	Mrs J Smith IRRV (Tech)
APPEARANCES:	Mr K Batty of Ken Batty Chartered Surveyors - on behalf of the appellant Mr M Harget – on behalf of the respondent Valuation Officer

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DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The panel confirmed a rateable value (RV) of £26,500 for the subject property with effect from 1 April 2017.

Introduction

3. This is a 2017 rating list appeal. Unit 2, Underwood Court, Glenfield, Leicester, LE3 8SG had been entered in the 2017 rating list at £26,500 RV with effect from 1 April 2017.

4. The challenge proposal was submitted by Ken Batty on behalf of Shahin Mitha T/A as Ella Convenience Store. It was received by the Valuation Officer on 18 January 2023. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was inaccurate. A revised RV was proposed of £17,250 with effect from 1 April 2017.

5. The Valuation Officer issued a challenge case decision notice on 11 August 2023 which disagreed with the proposed alteration of the list.

6. 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.

7. 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).

8. Mr Batty, of Ken Batty Chartered Surveyors, 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 Batty confirmed that he was instructed under a contingency fee basis 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 the client's case.

9. 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).

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

11. Mr Harget appeared as advocate and expert witness.

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

Backgound

13. The subject property is a purpose-built retail unit completed in the mid 2000's. It is situated in Glenfield, a large, mainly residential, village in Leicestershire, with reasonable bus links and around 2.5 miles from Leicester City centre. The subject property adjoins a much smaller retail unit, 1 Underwood Court. At 1 April 2017, the hereditament consisted of ground floor retail space with ancillary office space, staff toilets and internal storage. The total area of the property is 183.10m^2 and it is valued at an unadjusted rate of £140.00/m^2.

14. Mr Batty had argued that the unadjusted rate adopted is excessive compared with other shops in the locality and sought a reduction to £100.00/m^2. He further submitted that the poor layout of the store made it difficult for staff to easily see shoplifters and that this created a security problem. In his view, the disabilities of the layout warranted an allowance of 5% which resulted in his proposed assessment of £17,250 RV with effect from 1 April 2017.

15. The Valuation Officer defended the present assessment of £26,500 RV with effect from 1 April 2017.

Preliminary issue

16. Mr Harget had objected to the inclusion of Mr Batty's photographs and plans of the subject property on the grounds that he had only received them late on the Friday before the hearing. Mr Batty explained that the documents had been submitted to the Valuation Officer with his challenge proposal on 18 January 2023 and that this was not the first occasion where he had sent evidence that the Valuation Officer had subsequently been unable to locate.

17. At the hearing, Mr Harget confirmed that the photographs matched what he had seen during his recent site inspection of the subject property.

18. The panel was aware that there was no requirement for any photographs or plans to be included within the Tribunal submissions and that these could be provided electronically to the Clerk prior to a remote hearing, in accordance with the Consolidated Practice Statement. The panel accepted that Mr Batty had already sent this evidence to the Valuation Officer on 18 January 2023 and, in the circumstances, allowed them to be admitted.

Relevant Law

19. The term 'rateable value' is defined in Schedule 6 to the Local Government Finance Act 1988 (as amended):

    "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".

Discussion

20. The panel had to determine the rateable value for the appeal property, which represented a rent that a hypothetical landlord and tenant would agree, as at the AVD, 1 April 2015. The common date was used to ensure that every property was treated in a consistent way.

21. The Lands Tribunal judgment in Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141 provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property was considered to be the correct starting point but, where available, rents on similar properties were also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.

22. Mr Harget had referred to the rent of the subject property, which he understood to be a new letting on 1 December 2018 of £32,500 per annum, which he had analysed at £162.41 /m^2. Mr Harget conceded that this letting had been agreed three years after the AVD but nevertheless, he considered it supported the adopted price of £140/m^2.

23. The panel was aware from Lotus v Delta that whilst the best evidence was the subject rent, especially when close to the AVD, this was a starting point, and where available, rents on similar properties should also be taken into account and weight applied to the entire basket of evidence according to its merits.

24. In terms of indirect rental evidence, Mr Harget had referred to the rents passing on two other convenience stores in the locality. Of these, the panel found Tesco Express, Dominion Road, Glenfield, which had a rent review in March 2028 and had analysed at £179.42/m^2, to be the most persuasive. This property was much larger than the subject property, was also situated in a prime location and was 0.5km from the subject property. Mr Harget's other comparable property was 1 Cleveleys Avenue, Leicester, which was slightly smaller than the subject property and in an inferior location. This property had a rent review in 2013, which he had analysed at £122.63/m^2, and a second rent review in 2018 which he had analysed at £112.8/m^2. In his view, these rents demonstrated that there had been little change in the market between 2013 and 2018 and supported the adopted rate of £140/m^2 for the subject property.

25. No rental evidence was submitted by Mr Batty in respect of any comparable properties. As such, the panel went on to have regard to proposition four as set out in Lotus & Delta and the assessments of comparable properties.

26. Mr Batty had referred to 15 other shops in Leicester which ranged in size from 148.50m^2 to 789.06m^2 and had been assessed with adopted rates of between £60/m^2 and £130/m^2. In his view, based on his comparable evidence, the maximum valuation of the subject property should be £100/m^2. The panel noted that most of these properties were not purpose-built stores, and many were some distance from the subject property. As such, they were not particularly 'like for like' and the panel placed less weight on this evidence.

27. Mr Batty further maintained that the property immediately next to the subject property, 1 Underwood Court, which had been valued on a zoned basis, had a zone A value of £100/m^2 .In his experience, he had not previously found a situation where the overall value of a property was greater than the zone A value of other properties in close proximity. In considering this point, the panel noted that 1 Underwood Court was considerably smaller than the subject property, measuring just 37.9m^2. Furthermore, the subject property had been valued as a convenience store which was not subject to restricted opening hours under the Sunday Trading Act 1994.

28. Mr Harget had referred to five other purpose-built convenience stores in the locality. Of these, Tesco Express, Dominion Road, 64, Hinkley Road and 150A Hinkley Road, had all been valued at an adopted rate of £140/m^2 and ranged in size from 253.24m^2 to 344.30m^2. Of Mr Harget's remaining comparable properties, 2 Hinkley Road was much larger at 474.64m^2 and had an adopted rate of £100/m^2 and 1 Cleveleys Avenue, which was in an inferior location, had an adopted rate of £120/m^2.

29. The panel then turned to consider the second part of this appeal regarding an end allowance.

30. Mr Batty had sought a 5% allowance due to the poor layout of the subject property which he contended presented a security risk since customers were not necessarily visible to staff at the checkout. He referred to his photographs and layout plan which detailed a wall which partially divided the shop floor. Mr Batty had not submitted any comparable evidence to support his assertion an allowance was warranted.

31. Mr Harget argued that the layout of the subject property was similar to that of Tesco Express in Dominion Road where no end allowance had been made. He further contended that any disadvantages in the layout were already reflected in the adopted rate which was lower than the analysed rent.

32. The panel found Mr Harget's rental and tonal evidence to be persuasive, in particular Tesco Express in Dominion Road which was close to the subject property and also in a similar prime residential location. Mr Batty's comparable properties were located across the city of Leicester, some distance from the subject property, and many of them were in inferior

locations. Mr Batty had not provided any rental evidence and whilst the rent of the subject property had been agreed sometime after the AVD, it was difficult to argue that the unadjusted rate of £140/m^2 was excessive even allowing for any disadvantages in the layout.

33. Ultimately the burden of proof is on the appellant to persuade the Tribunal that the RV was unreasonable, and, in this case, the panel was not persuaded by the arguments put forward by Mr Batty.

Disposal

34. In view of the above findings and conclusions, the panel confirmed that the appeal property had been correctly valued at £26,500 RV, with effect from 1 April 2017, and therefore the appeal was dismissed.

Date issued to parties: 23 July 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.
