VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal: Local Government Finance Act 1988; Shop and premises; main space price; appeal dismissed.

APPEAL NUMBER:	CHG100898160	
RE:	Sofology, 4 Wessex Gate Retail Park, Poole BH15 3TE (the "appeal property")	
BETWEEN:	Sofology Ltd	Appellant
	and	
	Lucy Dyer MRICS (Valuation Officer)	Respondent
SITTING:	*Remotely using Microsoft Teams*	
ON:	29 January 2025 12:00	
BEFORE:	Mrs M Chaggar, Presiding Senior Member Mrs AE Fielder, Senior Member	
CLERK:	Mr R Gath IRRV(Hons)	
APPEARANCES:	Mr D Bullimore from Lambert, Smith, Hampton Miss A Brown (Valuation Officer's representative)	

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The Tribunal panel was not persuaded that the rateable value was unreasonable.

Introduction

3. The appellant had made a challenge against the accuracy of the compiled list assessment in the 2017 Rating List, by way of a proposal that he served on the Valuation Officer (VO) on 19 January 2023. After considering the proposal and evidence submitted during the challenge

period, the VO decided that the proposal was well founded and altered the existing assessment to £252,500 RV. A decision notice to that effect was served on the appellant on 1 May 2024. His representatives then appealed the VO's decision to the Tribunal on 29 August 2024, 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.

4. The appeal property was a shop and premises located together with a number of other units within the Wessex Gate Retail Park. It had a ground floor retail area with an agreed gross internal area (GIA) of 1,042.60m². It also had a mezzanine retail floor of 584.27m² with an addition for air conditioning.

5. As Mr Bullimore appeared on behalf of the Appellant as both advocate and 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. This question was raised in view of the Upper Tribunal's judgment in Gardiner & Theobald LLP v David Jackson (VO) [2018] UKUT 0253 (LC).

6. He declared that he was instructed under a success related fee arrangement. Mr Bullimore 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.

7. 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).

8. Ms Brown confirmed that she was representing the VO as advocate and expert witness.

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

Background

10. The issue in dispute before the panel was the correct tone of value to be applied to the appeal property. Mr Bullimore had initially sought a reduced entry of £185,000 RV based on a tone of value of £160/m². On behalf of the respondent, Miss Brown defended the VO's existing assessment of £252,500 based on a tone of value of £230/m².

11. The evidence bundle before the panel comprised all of the evidence disclosed and exchanged during challenge which included rental evidence and its analysis, the parties' skeleton arguments, a map of the retail park and photographs of some of the units.

Relevant Law

12. 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; and

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

13. In the case under consideration, the panel had analysed the competing evidence having regard to the authoritative guidance in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA141.

14. Both parties accepted that the passing rent on the appeal property was too far from the Antecedent Valuation Date (AVD) to be reliable as the lease commenced in 2021, six years after the AVD.

15. In terms of indirect rental evidence, Mr Bullimore referred to the rent passing on 2 Wessex Gate Retail Park which had analysed to £170/m². He also referred to the passing rent for Wren Kitchens which commenced in April 2015. However the panel applied little weight to the rent for this property as Miss Brown contended that it was not reliable as it was between connected parties and was not in the same part of the retail centre as the appeal property.

16. Although Miss Brown contended that the rent for this property was not reliable as it was nine months after the AVD, the panel applied less weight to this argument as rents either side of the AVD can be accepted as good evidence of the passing rent. Miss Brown contended that the passing rent for 2 Wessex Gate Retail Park which had analysed to £242/m² was the most reliable rent in the retail park. But, the panel also applied little weight to the passing rent for this property as it commenced in 1997, it was held on a 25 year lease with five yearly rent reviews. The commencement of the lease was clearly too far from the AVD to be reliable. The panel also considered that there were drawbacks to all of the other passing rents within the retail park as the leases commenced some years ago and were either too far from the AVD and they were held on either 10, 15, 20 or 25 year leases which was getting too far from the rating hypothesise of a year to year letting.

17. Turning to the tonal evidence, Mr Bullimore had argued that the VO had reduced the value of 1B Wessex Gate Retail Park from £240/m² to £160/m². However the panel applied weight to Miss Brown's argument that the reason it had been reduced so much was because the VO thought it was located within the parade of shops where the appeal property was located, rather than being located away from the appeal property in what the VO considered was a lower value area.

18. However, the panel did not apply much weight to the tonal evidence on the majority of the units as they were either substantially smaller or larger than the appeal property, or, they were not in the same location. However, the panel applied significant weight to 6 Wessex Gate Retail Park which had been agreed between the parties at £200/m², although the panel noted that it was substantially larger at 1,854m² and would therefore benefit from a quantum allowance. It also applied significant weight to numbers 2 and 3 Wessex Gate Retail Park. They were approximately 200m² smaller than the appeal property and had been valued at 240/m² which further supported the appeal being valued at £230/m².

Disposal

19. In view of the above findings and conclusions, the Tribunal panel was satisfied that the RV was reasonable as it was valued in line with other broadly similar units in the locality. The panel dismissed the appeal.

Date issued to parties: 21 February 2025

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.
