VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List appeals: Local Government Finance Act 1988; challenge to the compiled list entry and to an alteration to the list; rental evidence; appeals dismissed.

APPEAL NUMBERS:	CHG100884931 and CHG100918854
RE:	Unit 1 Priory Retail Park, 131 High Street, Colliers Wood, London SW19 2PP (the "subject property")

BETWEEN:	Dunelm (Soft Furnishings) Ltd	Appellant
	and	
	Lucy Dyer MRICS (Valuation Officer)	Respondent

SITTING:	*remotely using Microsoft Teams*
ON:	19 June 2024
BEFORE:	Mr AN Backway, Presiding Senior Member Mrs C Parkes, Member
CLERK:	Mrs A Sloan IRRV(Hons)
APPEARANCES:	Mr R Edwards (from GL Hearn for the Appellant) Ms S Pettinger (representing the Valuation Officer)

DECISION AND STATEMENT OF REASONS

Decision

1. The appeals are dismissed.

2. The panel found that the existing entry in the 2017 rating list was not unreasonable and confirmed the Rateable Value (RV) at £482,500 from 1 April 2017 and 8 May 2019.

Introduction

3. The appellant had made two challenges against the accuracy of the assessment in the 2017 Rating List, by way of proposals served on the Valuation Officer (VO) on 5 December 2022 (in respect of the compiled list entry at £580,000 RV) and 10 February 2023 (in respect of the

list alteration with effect from 8 May 2019 at £595,000 RV). After considering the proposals and evidence submitted during the challenge period, the VO decided that the proposals were partially well founded and two decision notices to that effect were served on the appellant on 11 August 2023. The entries in the rating list were based on £300/m^2 and the VO reduced the RV to £482,500, based on £240/m^2 in the challenge decision. Both decision notices referred to the reduction being from 8 May 2019, but the parties confirmed that the reduction had in fact been applied to the compiled list from 1 April 2017 as well, with the list being altered on 29 August 2023. That decision was appealed to the Tribunal on 15 and 16 November 2023, on the grounds that the current valuation for the hereditament was not reasonable.

4. The subject property is a retail warehouse and premises, constructed in 1999 and measuring 1854.87m^2, located on the Priory Retail Park in Colliers Wood, at the end of a terrace of four units. The parties had agreed the factual matters prior to the hearing and resolved a dispute regarding valuation of the air-conditioning. As a result, both parties submitted revised valuations for consideration by the Tribunal.

5. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Edwards stated that he was appearing before the panel in a dual role as both advocate and expert witness. He confirmed that his firm was not instructed on a success related fee basis. Ms Pettinger was also appearing as advocate and expert witness for the VO. The parties were agreeable to these appeals being heard together as they concerned the same property and appellant but two different effective dates.

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

Issue and Relevant Law

7. The existing entry in the rating list was £482,500, based on £240/m^2. Shortly before the hearing, Ms Pettinger provided a revised valuation to reflect the parties' discussions on the valuation for the air conditioning following a joint inspection. She confirmed all facts were agreed and her revised valuation was £492,500. Mr Edwards originally sought a reduction in RV to £432,500, based on £207.50/m^2. However, following discussions on the air conditioning, he provided a revised valuation at £434,000.

8. The panel was aware that the 2017 list was closed and, in accordance with Regulation 38(5) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, it could only increase an entry in the list from the date of the decision. Therefore, the VO's increased valuation could not be considered. The decision for the panel was to determine whether the existing entry in the list at £482,500 was reasonable as the parties could not agree on the price per m^2 to be applied.

9. Mr Edwards confirmed that the air-conditioning had been present at the subject property on 1 April 2017, but the VO was prevented from backdating her increased valuation to reflect it from 8 May 2019. 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 1992/556) as amended. In respect of the subject appeal, the material day is 1 April 2017.

10. 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. The issue

before the panel was to determine the correct valuation for the subject property with effect from 1 April 2017 and from 8 May 2019.

11. Mr Edwards placed most weight on the rent agreed on the subject property. Ms Pettinger contended that, when considering the basket of rental evidence, the existing valuation was not unreasonable.

12. The subject property must be valued for the purpose of non-domestic rating on the basis of the rent at which it might reasonably be expected to let from year to year on a number of assumptions (see paragraph 2(1) of Schedule 6 of the Local Government Finance Act 1988).

13. The panel was aware of the Lands Tribunal judgment of *Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council* [1976] RA 141 cited by the parties. This case had established six propositions, which gave clear guidance to be followed, namely:

    (1) ‘Where the hereditament which is the subject of consideration is actually let that rent should be taken as the starting point.

    (2) The more closely the circumstances under which the rent agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of Gross Value in s.19(6) of the General Rate Act 1976 the more weight should be attached to it.

    (3) Where rents of similar properties are available, they too are to be 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.

    (4) Assessments of other comparable properties are relevant. When a valuation list is prepared these assessments are to be taken as indicating comparative values estimated by the Valuation Officer. In subsequent proceedings on that list therefore they can properly be referred to as giving an indication of that opinion.

    (5) In light of all the evidence an opinion can then be formed of the value of the appeal hereditament, the weight to be attributed to the differing 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.

    (6) 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 be clearly more difficult to reject the evidence of the actual rent.’

Discussion

14. Mr Edwards explained that the subject property is held on a 25-year lease from 27 September 1999 by DSG Ltd. The rent was initially £399,700 per annum and was increased to £599,600 on the September 2004 rent review. Subsequent rent reviews in 2009, 2014, and 2019 resulted in no uplift.

15. The subject property was vacated in 2011 following riots in the area and advertised on the rental market. On 7 September 2015 the lease was completed with the appellant company. The lease required the appellant to pay £460,000 up to 26 September 2019 and then a rent

of £500,000 from 27 September 2019 until the lease expires on 26 September 2024. The difference between the rent paid by the appellant and the rent reserved under the head lease is paid by DSG Ltd. DGS Ltd also paid an inducement to the appellant company of £625,000 to take the lease.

16. Mr Edwards' analysis of the rent produced a unit price of £207.84/m^2, which he contended demonstrated the existing valuation at £240/m^2 is unreasonable. As the appellant company's rent was agreed in 2015, he considered it carried the most weight in valuing the subject property as it stood on the AVD.

17. Ms Pettinger submitted the VO's analysis of the subject property's rent, both on the amount payable by DSG Ltd of £599,600 (adjusted to £477,026) and the amount paid by the appellant company, £460,000. The VO analysed these rents to £256.11/m^2 and £246.97/m^2 respectively. Ms Pettinger submitted that the difference between the parties' analysis maybe due to their treatment of the inducement from DSG Ltd to the appellant. However, she considered that the VO's analysis supported the existing valuation at £240/m^2.

18. In support of her case, Ms Pettinger referred the panel to Unit 1 Plough Lane, SW17 0BW. This unit is located around 1.6 miles from the subject property and similar in age. Unit 1 Plough Lane was let from 1 May 2016 at £385,000. The rent was adjusted for a rent-free period and stepped rent, resulting in an adjusted rent of £313,219, analysed to £219.76/m^2. She highlighted that this unit was valued at £230/m^2 and was unchallenged.

19. Some settlement evidence was also provided by the VO. At the Shannon Corner Retail Park in New Maldon, three units were referenced. Unit C (Harvey's Furnishing) and Unit B (Carpetright) were both reduced from £385/m^2 to £255/m^2. Unit A (DFS Furniture) was reduced from £350/m^2 to £235/m^2. The panel noted that these units were slightly older than the subject property, being constructed in 1996, and Units B and C were significantly smaller, measuring 905.30m^2 and 688.12m^2, respectively. The panel found the most useful comparison to be Unit A which measured 1845.85m^2, comparable to the subject property. The agreement at £235/m^2 was with G L Hearn and the panel found that the settlement added weight to the VO's case that the rate of £207.50/m^2 sought by Mr Edwards was not in line with the tone of values for this type and size of property in the locality.

20. The burden of proof in appeals of this nature rests with the appellant to prove his case for a reduction. After considering all the evidence, the panel found that the starting point must be the rent agreed on the subject property, in accordance with *Lotus & Delta.* However, the panel noted that the rent required adjustment to meet with the statutory definition and the parties had not agreed on the analysis. The VO's analysis clearly supported the existing valuation at £240/m^2, but Mr Edwards' analysis produced a much lower figure. The panel noted that the rent passing on the subject property was subsidised and there was a significant incentive to take the lease. It therefore found that, although the lease was agreed close to the AVD, the adjustments required meant that it was not a 'clean' rent and the rents and settlements on other similar properties should be considered.

21. Unit 1 Plough Lane was not on the same retail park as the subject property, but the panel found that 1.6 miles was reasonable for comparison in the same locality. The rent on this property was further from the AVD and also required adjustment. However, the valuation at £230/m^2 had not been challenged, despite this being higher than the analysed rent. The panel also placed weight on the DFS Furniture assessment at Unit A Shannon Corner Retail Park. This property was very similar in size to the subject property and valued at £235/m^2. No

detail was provided on the distance of this property from the subject property, but the panel presumed that it was in the same locality as it had not been challenged by Mr Edwards.

22. The panel found that the subject property's rent should not be considered in isolation, and it was correct to look at the basket of evidence on surrounding assessments. The VO had provided evidence of broadly similar units, and none were valued as low as the price sought by the appellant in this case. There appeared to be an established tone for this type of property, as demonstrated by the settlements. Mr Edwards had supplied no comparable properties, other rents, or settlements, to support a valuation at £207.50/m^2. The panel found that, on the available evidence, the existing valuation was not unreasonable and dismissed the appeals.

Disposal

23. In view of the above findings and conclusions, the panel is satisfied that the existing entry in the 2017 rating list is not unreasonable, and it confirmed an RV of £482,500 from 1 April 2017 and 8 May 2019.

Date issued to parties: 3 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.
