VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal: Local Government Finance Act 1988; retail premises; accuracy of compiled list entry; end allowance for poor layout; appeal allowed-in-part

APPEAL NUMBER:	CHG100921118
RE:	118 A, Holland Park Avenue, London, W11 4UA (the "appeal property")
BETWEEN:	Bournewood Designs Limited — Appellant and Andrew Ricketts (Valuation Officer) — Respondent
SITTING:	*remotely using Microsoft Teams*
ON:	30 May 2024, Remote Hearing 3
BEFORE:	Mr A Hussain, Presiding Senior Member Ms N Akhter, Senior Member
CLERK:	Mrs D Davies IRRV(Hons) BA (Hons)
APPEARANCES:	Mr David Semple, from Altus Group, on behalf of the appellant as both advocate and expert witness Mr Geoff Emery, on behalf of the respondent as both advocate and expert witness

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed-in-part.

2. The Tribunal Panel determined that the appeal property's assessment should be reduced to £28,500 Rateable Value (RV) with effect from 1 April 2017.

Introduction

3. This is a 2017 rating list appeal. The appeal property had been entered in the 2017 list as a shop and premises at a rateable value of £36,750. Following the submission of the challenge on 14 February 2023 the Valuation Officer reduced the RV to £31,250. The appellant is seeking a reduction in the RV to £24,500 and pursued an appeal to this tribunal. The appeal was registered on 9 August 2023, the grounds being 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. There was a delay to the start of the hearing due to some technical difficulties with Teams, however, once underway, the hearing itself was not affected.

5. In order to assist the tribunal, the parties had agreed all basic facts before the hearing. The measurements of the component parts were not in dispute.

6. The representatives of both parties appeared before the panel as advocates and expert witnesses. Mr Semple confirmed that his company was employed on a contingency fee basis. Both parties declared that they understood and fully accepted that their duty was to the Tribunal in giving evidence and that they would comply with this as well as the requirements of the professional body, regardless of whether or not the evidence supported the client's case. The panel accepted the expert witness evidence on the above basis: the appeal was not considered complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions - general) of the Procedure Regulations. The panel determined that it was appropriate to consider the 'expert' evidence and assess what weight, if any, to give it in the context of the issue before it.

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

Background

8. The appeal property is a shop just off Holland Park Avenue; situated at the rear of number 118 it is visible from Holland Park Avenue, but it is accessed from Portland Road. The premises span three floors, with the first floor being residential, and the ground and basement floors containing retail space. The basement, which contains the majority of the retail area, is accessed by a steep spiral staircase.

9. The rate per metre^2 is £1150 and the appellant was seeking a reduction to £950 per m^2. In addition, the appellant sought an allowance to reflect the poor layout of the shop, resulting in the desired RV of £24,500.

10. The evidence before the panel comprised of the evidence disclosed and exchanged during the challenge process. This included photographs of the appeal property and surroundings, a location plan, rating assessments in support of tone, the parties' skeleton arguments, a schedule of comparable rental evidence, and a copy of the proposed valuation.

Relevant Law

11. The term 'rateable value' was defined in Schedule 6 to the Local Government Finance Act 1988 (as amended). The value was required to reflect an annual rent on the property, assuming a new letting with the tenant being responsible for all rates, taxes, repairs and

insurance. In respect of all entries in the 2017 rating list, the Rating Lists (Valuation Date) (England) Order 2014 requires the rental levels to be taken as at 1 April 2015, the antecedent valuation date (AVD).

12. The material day (the date by which physical factors have to be considered) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. For this compiled list appeal, the material day is 1 April 2017.

13. The panel analysed the competing evidence with reference to the authoritative guidance in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA141, referred to within the evidence provided by both parties. This Lands Tribunal decision provided guidance on the weight to be attached to rental and assessment evidence.

Discussion

14. The panel followed *Lotus and Delta* and began by considering the rent on the appeal property. The rent of £35,000 was set in March 2016, and the VO had analysed it to £1276/m^2. The appellant's representative contended that the rent should have little weight applied to it because the tenant had not been represented when agreeing the lease, putting the landlord in a superior negotiating position. The panel had to take into account the appeal property rent but also recognised that it needed to consider the full basket of evidence. The valuation officer had reduced the RV below the level of the rent and had therefore not relied solely on the rent passing. Reviewing the rental evidence of comparable properties, the panel noted that the rent on the appeal property sat in the middle of a range from £846.46 to £1742.50.

15. The panel considered the reasons for the variances. The comparable properties were located on Holland Park Avenue or on Portland Road and Clarendon Road, which are streets feeding from it. The higher rents were on Holland Park Avenue: the rent for 124-124b Holland Park Avenue analysed to £1742.50, and number 118 to £1575.02. A property diagonally across the road from the appeal property, 2 Holland Park Terrace, had the lowest of the rents at £846.46 per/m^2. The panel noted from the photographs that, although similar in terms of proximity to, and visibility from, Holland Park Avenue, the properties varied significantly in character and 'kerb appeal', with the appeal property being much more attractive and slightly better positioned.

16. The panel considered the rate per m^2 on comparable assessments. The appellant's representative had provided details of numbers 4,8,10,12 and 14 Portland Road which were rated at £850/m^2. However, he agreed that the appeal property occupied a superior position and explained that he had therefore adopted a rate of £950/m^2.

17. The panel was not persuaded by the contention of the appellant's representative that the business struggled to attract any passing trade from Holland Park Avenue. However, it did form the view that the variance in price per metre^2 between the appeal property and its near neighbours on Portland Road was excessive, albeit the character and position of the appeal property made it more akin to the comparable properties on Holland Park Avenue than to those on Portland Road and Clarendon Road. Taking all of the above factors into account the panel determined that the price per m^2 should be £1100.

18. The panel went on to consider whether an end allowance for poor layout was warranted. The photographs showed that access between the floors was via a very steep and open spiral staircase. The appellant's representative explained that many customers did not even

attempt the staircase. The panel considered that the stairs would be a barrier to some customers, and also that it could limit the movement of stock between floors. The panel determined that an end allowance of 5% was warranted.

Disposal

19. In view of the above findings and conclusions, the Tribunal Panel is satisfied that the current assessment is unreasonable. The panel determined that the rateable value should be reduced to £28,500. There is a breakdown of the revised assessment below.

Description	Area m^2	£/m^2	Value £
Ground Floor Retail Zone A	11.81	1100	12,991
Ground Floor Retail Zone A	4.34	733.26	3,182
Ground Floor Retail Zone B	4.86	550.00	2,673
Ground Floor Retail Zone B	5.48	383.30	2,100
Basement Retail Area	62.50	110.00	6,875
Basement Storage	12.80	55.00	704
Basement Kitchen	5.12	55.00	282
Basement Retail Area	10.40	110.00	1,144
Sub-total			29,951
Air Conditioning	26.5	7.00	186
			£30,137
Less 5% for layout			1,507
			28,630
Say £28,500 RV with effect from 1 April 2017			

20. The Valuation Officer is ordered to reduce the 2017 Rating List entry to £28,500 RV, with effect from 1 April 2017, within two weeks of the date of this Order.

Refund of fees

21. As the appeal was successful (either in part or full) a refund of the paid fee will now be arranged (Regulation 13E of the NDR Alteration of Lists & Appeals Regs) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

Date issued to parties: 25 June 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.