IN THE VALUATION TRIBUNAL FOR ENGLAND
IN THE MATTER OF A 2017 RATING LIST APPEAL

Case No: CHG100961760

Sitting remotely using Microsoft Teams

Date: 16 June 2025

SCHEDULE 11 TO THE LOCAL GOVERNMENT FINANCE ACT 1988

RATING — Local Government Finance Act 1988 — Zone A rate considered excessive, effect on future redevelopment, tone of the list; Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council [1976] RA 141, Prodorite v Clarke (VO) (1993) RA 197, Dawkins (VO) v Ash Bros and Heaton Ltd, R v South Staffordshire Waterworks Co, (1885), 16 QBD), Appeal dismissed.

Before:

MR SC KAMALAN
MRS OO ROBSON

Between:

WATERSTONES BOOKSELLERS LIMITED **<u>Appellant</u>**

- and -

NICOLA JOHNSON (VALUATION OFFICER) **<u>Respondent</u>**

Regarding:
WATERSTONES,39-41 NOTTING HILL GATE, LONDON, W11 3JQ
(the “subject property”)

Mr B Barton and Mr A Waller of G L Hearn Ltd on behalf of the Appellant

Mr G Emery for the Respondent

Hearing date: 22/05/2025

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The Tribunal found that the Zone A value of £960 per m^2 was not excessive and confirmed the Rateable Value (RV) of £164,000 from 1 April 2017.

Introduction

3. 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.

4. Mr Waller appeared on behalf of the appellant as advocate and Mr Barton as expert witness. In view of the Upper Tribunal's judgment in Gardiner & Theobald LLP v David Jackson (VO) [2018] UKUT 0253 (LC), they confirmed that they were instructed on a set fee arrangement. Both declared that they understood and accepted their duty was to the Tribunal in giving evidence and they would comply with this as well as the requirements of their professional body regardless of whether or not the evidence supported the 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). The panel therefore considered the "expert" evidence and attached such weight to it as it saw fit.

6. Mr Emery appeared before the Tribunal as advocate on behalf of the VO.

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

Background

8. The subject property was a ground floor retail unit with additional retail and storage on the first floor. It was entered in the 2017 rating list with an RV of £164,000 based on a Zone A rate of £960 per m^2. It was situated in Newcombe House with offices above.

9. G L Hearn Ltd submitted a check in respect of the subject premises on 4 February 2023 on behalf of the Appellant. The Valuation Officer (VO) issued a check decision on 13 February 2023, no change was made to the assessment. A challenge was submitted on 16 March 2023 proposing a RV of £123,000. This was based on a choice of 2 valuations, either a reduction in the Zone A rate to £715 per m^2 or a change in valuation approach to an overall basis and a rate of £225 per m^2 applied. The Challenge decision notice issued on 28 August 2024 made no change to the Zone A rate and the appeal was received on 16 December 2024.

10. On behalf of the Appellant it was argued that in accordance with *Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council [1976] RA 141*, the subject rent agreed on 28 September 2014 at £120,000 per annum should be taken as the starting point for the valuation of the premises. Given that the subject rent was agreed fewer than 7 months prior to the Antecedent Valuation Date (1 April 2015), this rent was a reasonable representation of an expected rent on 01 April 2015. The property is set back, and the view of the frontage is restricted, and it is essentially a stand-alone shop in the area of Notting Hill Gate it was accepted that the VO had applied a lower value compared to other properties in the area. It was considered that the rent demonstrated that the Zone A rate was still excessive and should be reduced further to reflect an expected rent on 01 April 2015.

11. An alternative valuation on an overall basis of £225 per m^2 was proposed which would result in the same RV. It was argued that the property was unique as it was set back from the main parade and much larger than many of the surrounding shops, it was situated in the lower floors of offices and in a corner position.

12. The VO considered the rent on the subject property was not reliable as planning permission was sought for the redevelopment of the building and this would have affected the rental bid. Rents on comparable properties in the vicinity were considered to carry more weight and therefore the Zone A rate reflected the rental bid from a hypothetical tenant coming new to the scene without the effect of the future redevelopment plans on the rental bid.

Relevant Law

13. 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).

14. 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.'

15. 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. As this was a 2017 rating list appeal the material day was 1 April 2015.

Discussion

16. The Appellant relied upon the actual rent for the subject property to support the lower RV sought. The panel noted this was a rent review and therefore held less weight that a new letting agreement. The VO had provided the details of the rent reviews on the subject property as follows:

29 September 2009 rent review £160,000 per annum 5 year term
28 September 2014 rent review £120,000 per annum 5 year term
21 September 2017 rent review £120,000 per annum 1 year 3 month term
January 2020 rent review £120,000 per annum 1 year term.

17. On behalf of the Appellant it was argued that when the 2014 rent was negotiated the landlord was not aware that the planning application for the scheme would be made and rejected and therefore the rent was agreed with every prospect of continuance. It was a full market rent taking into account the disabilities of the subject property.

18. The VO also provided details of the rents between 2008 and 2015 on properties in the locality to demonstrate that there was growth in the market at the time and therefore the actual rent on the subject property did not reflect the market conditions in 2014 when the rent review took place and was therefore not reliable:

    b) 116 Kensington Church Street – April 2008 rent £26,000 on a 5 yr term.
    April 2010 rent £48,000 on a 1 yr term.

    b) 110 Kensington Church Street - Dec 2014 rent £53,000 6yr term 5 yr rent reviews.

    c) 162-164 Kensington Church Street - Nov 2011 rent £43,000 10 yr term FRI.
    Nov 2011 rent £57,700 rent review term 10 yrs.

19. The VO argued that the reduction in rent in 2014 and the lack of increase in the subject rent since showed that the rent had been agreed in the knowledge that there was a limitation on the period that the subject property would be available, and that the Landlords objective was to keep the subject property occupied until finalisation of the redevelopment plans. The first application for redevelopment had been made in December 2015 and therefore the Landlord would have been aware of the plans when negotiating the rent. However, from a rating perspective the development scheme was not certain and therefore any impact on the rent should be disregarded. This was in accordance with *Prodorite v Clarke (VO) (1993) RA 197* and *Dawkins (VO) v Ash Bros and Heaton Ltd.* It had actually taken ten years and was the longest planning dispute to date with public enquiries and multiple applications before the granting of the scheme.

20. The panel had regard to the caselaw in *Dawkins(VO) v Ash Bros* a judgment that predates the 1988 Act in which a compulsory purchase order included part of a factory that was due to be demolished within approximately a year and considered whether it should have its value determined by attributing to the hereditament the actual value of the beneficial occupation by the tenant rather than some artificial value because of the impending demolition and referred to *R v South Staffordshire Waterworks Co*, (1885), 16 QBD) a judgment identified by the appellant as supporting his argument where it was stated:

"This was followed by *R v South Staffordshire Waterworks Co*, where Lord Esher MR said ((1885), 16 QBD at p 370);

"A tenant from year to year is not a tenant for one, two, three or four years, but he is to be considered as a tenant capable of enjoying the property for an indefinite time, having a tenancy which it is expected will continue for more than a year, but which is liable to be put an end to by notice."

21. The VO also referred to *Prodorite v Clark* which also considered the effect of a compulsory purchase order on premises and held that the ratepayer had not shown that the compulsory purchase order had an effect on the use and enjoyment of the premises as such use had remained unchanged. The panel considered that in this case the effect of the planning applications which took several years to be granted had not altered the tenant's ability to use and occupy the subject property. It was clear from the rent renewal evidence that as the process of the planning application continued the rent reviews were for shorter periods but as of 1 April 2015 although the rent had been reduced there had been no effect on the quiet enjoyment of the premises.

22. The panel found that the Appellant's reliance on the rent passing on 1 April 2015 should be given little weight, there had been a reduction in the rent between 2009 and 2014, however the evidence from the VO demonstrated that there was an increase in the market value of rents in the locality between 2008 and 2014. Therefore the panel found the subject property rent was out of line with the tone that was established in the area.

23. The panel found that the planning process had an effect on the rent agreed but this should be disregarded as the appellant continued to have beneficial occupation of the premises in the same manner as previously when the rent was higher. In accordance with *Lotus & Delta* having had regard to the local rents which could be relied upon to establish a tone for the area of between £700 and £1050 ITZA. The panel placed weight on the settlement on 227 Kensington Church Street where the ITZA was reduced from £1300 per m^2 to £1100 per m^2, this was a much smaller premises and adjusting for quantum and the fact that the subject property was set back slightly the £960 per m^2 Zone A value of the subject property did not appear excessive.

Determination

24. In view of the above findings and conclusions the Tribunal finds that the RV of £163,000 from 1 April 2017 was not excessive.

Right of further appeal

25. Any party who is aggrieved at the Tribunal's decision, and who appeared or was represented at the hearing, has a statutory right of further appeal to the Upper Tribunal (Lands Chamber) pursuant to Regulation 42 of the Tribunal Procedure Regulations. A party does not require permission to appeal from the Tribunal. Any appeal must be made directly to the Upper Tribunal (Lands Chamber) within **four weeks** of the date this decision and statement of reasons is issued.

26. Further information regarding this statutory right of further appeal, and the parties' other rights, is contained in the guidance booklet "*A guide to tribunal decisions"* available on the Tribunal's website at www.valuationtribunal.gov.uk/guidance-booklets/.

Mr SC Kamalan, Senior Member (Presiding)

Mrs OO Robson, Senior Member

16 June 2025

Mrs J Routledge
Clerk to the Tribunal
Date issued to the parties: 16 June 2025