VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeals; retail shop and premises; base rate in dispute; analysis of rent on comparable properties; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal dismissed.

APPEAL NUMBER:	CHG100977365	
RE:	Gnd Flr Tannery Building,471, Kirkstall Road,Leeds,LS4 2QD (the "subject property")	
BETWEEN:	Wed2B Limited	Appellant
	and	
	Ms J Moore (Valuation Officer)	Respondent
SITTING:	*remotely using Microsoft Teams*	
ON:	8 July 2024	
BEFORE:	Mr Amran Hussain, Presiding Senior Member Ms TM Blades, Senior Member	
CLERK:	Miss F Willson IRRV(Dip) BA(Hons)	
APPEARANCES:	Mr C Diamond (on behalf of the appellant) Mr J Wallace (on behalf of the respondent)	

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The Tribunal Panel confirmed the revised rateable value (RV) of £40,000 for the subject property with effect from 1 April 2017.

Introduction

3. This is a 2017 rating list appeal for the subject property which was entered in the 2017 rating list as 'shop and premises' at an RV of £40,000 with effect from 1 April 2017. The challenge proposal was submitted on 21 March 2023. The challenge sought a revised assessment of £28,750 RV with effect from 1 April 2017. The Valuation Officer (VO) determined that it was not well founded and issued a challenge case decision notice to this effect on 17 January 2024.

4. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appellant maintained that the RV of £40,000 was unreasonable and appealed the decision which was received by the Tribunal on 7 February 2024.

5. Mr Diamond appeared on behalf of the appellant as both advocate and expert witness. Therefore, it was important to ascertain if there was a success related fee involved and if so whether its existence was compatible with his obligations to the tribunal as an expert. This question was raised in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC). Mr Diamond confirmed that he was instructed under a contingency fee 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 his client's case.

6. 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).

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

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

Background

9. The subject property was on the ground floor of a refurbished two storey Grade 2 Listed Victorian 'Dry House' which front onto Kirkstall Road a main arterial road into the city centre which is approximately a quarter of a mile away. The property has a total area of 315m^2 in terms of main space (ITMS) and has five car park spaces at the rear of the property. The ground floor has no display frontage having standard office glazing. Kirkstall Road has a mixture of residential, commercial and industrial use. Consent to use the property as a bridal shop was obtained in 2017 when it was fitted out a as sales and changing rooms with light weight metal stud partitions. The planning officer noted that "!all the changes are easily reversible and will not interfere with the remaining internal history."

10. The issue between the parties is whether the subject property should be valued at a main rate of £120/m^2 as submitted by the VO or a main rate of £85/m^2 as the appellant's agent submitted.

Relevant Law

11. The panel is governed by Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999, which provides that:

> 2(1) 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;
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> (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.

12. 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).

13. 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 No. 556) as amended. In respect of the subject appeal, the material day is 1 April 2015.

14. Where rental evidence is available, the weight to be attached should be considered in light of the following six propositions set down in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141.

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

    (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 section 19(6) of the General Rate Act 1967 the more weight should be attached to it. (These statutory requirements now contained in Schedule 6, Para 2 (1) Local Government Finance Act 1988 (as amended by the Rating (Valuation) Act 1999)).

    (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 be 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 attached to the differing types of evidence depending on the one hand 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 each circumstance, it would be difficult to reject the evidence of the actual rent.

Discussion

15. The appeal hereditament 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 to the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015. Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2015.

16. Mr Diamond drew the panel's attention to a settlement in connection with a nearby property of 229 Kirkstall Road which had a base rate of £120/m^2 but was reduced by agreement to £85/m. He submitted that most weight should be placed on this settlement as the subject property was on the same road and in a more prominent position being closer to Leeds city centre. Mr Diamond drew the panel's attention to the fact that the VO had stated that the subject property did not have is' not a traditional retail frontage' which he argued implied that as a retail unit it does not have the desirable qualities of a shop and premises. 229 Kirkstall Road had initially been assessed using a base rate of £120/m^2 but had then been reduced to £85/m^2 by agreement and his supported the subject property having the same reduction.

17. Mr Diamond submitted that he did not believe the actual rent passing on the subject property should be given much weight when assessing it's RV. The rent was two years post AVD and was not in line with assessments on comparable properties in the locality especially when taking not account the physical characteristics of between them. He further submitted that his client had made substantial changes to the subject property.

18. Mr Diamond explained that the rent on the office on the first floor of the same building as the subject property was in his view incorrectly used as a strong comparable by the VO. Mr Diamond submitted that to use the rent on the first floor property was not comparing 'like for like' as it was an office unlike the subject premises. He drew the panel's attention to the copy of the lease for the subject property which stated that it's permitted use was as a 'retail unit' not an office. The first floor assessment had an entry in the 2010 rating list of £120/m^2 with the subject property being £85/m^2. In the 2017 rating list the first floor had a base rate of £140/m^2 where the subject property had a base rate of £120/m^2.

19. Mr Wallace on behalf of the VO submitted that the settlement on 229 Kirkstall Road should not be given little weight as the properties were different to each other. The subject property did not have the appearance of a shop unlike the settlement property which was a purpose built retail warehouse/supermarket. 229 Kirkstall Road was also in a different area with other retail units including Starbucks and the location was therefore very different to that of the subject property.

20. The first floor in the same building was, in Mr Wallace's view, the best evidence as the subject property vacant and to let would be an office the same as the first floor. The subject property would not require any structural work to return it to an office. This he submitted made it an office when next vacant and to let and meant that it would compete against the first floor office for prospective tenants.

21. The rent on the subject premises was unreliable, he submitted, as it was two years post AVD and had a one year rent free period with substantial fit out costs which he argued were unsubstantiated. He did however believe that even taking the subject property rent and making the adjustments it still devalued to £113/m^2 and therefore supported the present base rate of £120/m^2.

22. The panel found:

(1) The settlement on 229 Kirkstall Road was of limited weight as it was significantly different to the subject property being a purpose built retail warehouse/supermarket. The two properties were therefore not 'like for like' comparators.

(2) The rent on the subject property could carry little weight due to it being two years post AVD and requiring adjustments in regard to the rent free period and fit out costs. Even if the adjustments were made the rental for the subject property supported the RV of £40,000.

(3) That vacant and to let the subject property would be an office as no structural alterations would have to be made to return it to an office. The RV should therefore be assessed as an office. The base rate on the first floor office n the same building as the subject property of £140/m^2 was therefore persuasive that the base rate of £120/m^2 on the subject was not unreasonable.

Disposal

23. From the evidence provided by the respondent the panel was satisfied that the current assessment of the subject property at £120/m^2 was reasonable and therefore dismissed the appeal.

Date issued to parties: 6 August 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.