VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal: Local Government Finance Act 1988; retail premises; accuracy of compiled list entry; rental evidence; comparable evidence; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal allowed-in-part.

APPEAL NUMBER:	CHG101061252	
RE:	Unit 1 St Nicholas House High Street, Colchester, CO1 1DN (the "appeal property")	
BETWEEN:	The Entertainer (Amersham) Ltd	Appellant
	and	
	Joanne Moore (Valuation Officer)	Respondent
SITTING:	*remotely using Microsoft Teams*	
ON:	13 June 2024, Remote Hearing 2	
BEFORE:	Ms S Penni, Presiding Senior Member Mr A Hussain, Senior Member	
CLERK:	Mrs D Davies IRRV(Hons) BA (Hons)	
APPEARANCES:	Mr Anthony Waller, of GL Hearn Ltd, on behalf of the appellant as both advocate and expert witness Mr Lee Stevens, 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 £67,000 Rateable Value (RV) with effect from 1 April 2017, based on the existing overall method of valuation at a main space rate of £185/m^2.

Introduction

3. This is a 2017 rating list appeal. The appeal property had been entered in the 2017 list as a shop and premises, RV £83,000. The appellant was seeking a reduction in the RV to £59,000, contending that the assessment should be determined on the basis of zoning rather than the overall method. The valuation officer determined the challenge to be not well-founded and so the appellant appealed to this tribunal. The appeal was registered on 18 January 2024, 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. In order to assist the panel, the parties had agreed all basic facts before the hearing.

5. Mr Waller was appearing on behalf of the appellant as 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 Waller confirmed that he was not on a contingency fee basis. He also declared that he understood and fully accepted that his duty was to the Tribunal in giving evidence and that he 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.

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

<u>Background</u>

7. The appeal property is a shop and premises on the High Street in the newly designated city of Colchester. The building in which the appeal property is situated spans three floors, with the ground floor being retail sales space and the basement being ancillary office and storage space. The appeal property has a total area of 549m^2, 291m^2 of which is sales space. The remainder of the building is in different occupation and is used as a hotel.

8. The current assessment has been calculated on the overall method, at the rate of £230/m^2 in terms of main space (ITMS). The appellant contends that the assessment should be calculated with reference to the zoned method, at a zone A rate of £300/m^2. If adopted this would result in a revised RV of £59,000.

9. The evidence before the panel comprised of the information disclosed and exchanged during the challenge process. The submissions included photographs of the appeal property, a Goad plan, rating assessments in support of tone, the parties' skeleton arguments, and a copy of the current and proposed valuations.

Relevant Law

10. 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).

11. 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.

Discussion

12. The panel analysed the competing evidence with reference to the authoritative guidance in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA141, which was included in the evidence documents. The Lands Tribunal judgment provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the appeal property is accepted to be the correct starting point, with consideration given to how that rent accords to the terms of the statutory definition of rateable value. The appeal property's rent was agreed in January 2016 at £85,000 per annum over a 10-year lease. However, in this case the panel understood that the rent was not an arms' length rent, and that it was subsequently part of a sale and leaseback transaction, and on that basis the panel attached less weight to it. There was no rental evidence provided in respect of other properties and so, in line with *Lotus & Delta*, the panel moved on to consider the assessments applied to other comparable properties.

13. The appellant provided details of neighbouring retail units. Mr Waller explained that there were 23 retail units on the High Street in the same size bracket (400m^2 -1,500 m^2), and, with the exception of the appeal property, they were all valued on the zoned basis. The zone A rates applied to the comparable properties varied from £250/m^2 to £540/m^2.

14. The evidence submission included a Goad plan which illustrated the clusters of the various zone A rates applied to the retail units in the vicinity The panel noted that the appeal property was effectively located in its own block, being between St Nicholas Passage and St Nicholas Street. The zone A rate applied to the shops above St Nicholas passage (agreed by both parties as the better end of the High Street) was £540/m^2. Moving down the street, the zone A rate dropped to £250/m^2. The appellant had initially contended that the appeal property should be assessed in line with the £250/m^2 end of the street but subsequently sought a zone A rate of £300/m^2 to reflect the slightly better location. Mr Stevens highlighted the attractions of the other end of the street describing it as "poorer but more interesting".

15. The retail units on the other side of the street, diagonally opposite to the appeal property, were valued at £470/m^2 and the valuation officer contended that, should the zoned method be adopted for the appeal property, this would be the appropriate rate, resulting in an increased assessment to circa £91,000 RV. The appellant's representative raised the issue of declining rental values for Colchester's retail market, arguing that it was nonsensical that the appeal property alone would see an increased assessment when all the retail units around had reduced by amounts in the region of 15-20% from the previous rating list. The panel noted that the valuation officer's representative had agreed, when questioned, that if he were to stand back and look at the assessment, £91,000 seemed high for the appeal property. The panel compared that with the similar sized Lloyds Bank at 26 High Street, the better end of the street: as that property has an RV of £90,000 the panel determined that a Zone A rate of £470/m^2 would be excessive for the appeal property.

16. The appellant's representative argued that, if the zoned method was to be used, the zone A rate should be £300/m^2. The panel compared the appeal property's assessment to that of the

suggested comparable properties, in particular the property directly across the road, 108 High Street, and one from either side of the appeal property, numbers 49 and 61a/62. Number 108 is a shop with a total area of 723m^2; zoned at £470/m^2 the RV is £64,000. Number 49, on the better end of the High Street has an area of 643m^2 and an RV of £51,500, based on a zone A rate of £540/m^2. The property on the other side of St Nicholas Street, towards the ‘poorer’ end, is similar in size to the appeal property at 511m^2; it has a zone A rate of £250/m^2, and the RV is £43,500. After having regard to this evidence, the panel noted that the appeal property’s assessment appeared excessively high.

17. Considering the matter of what the appropriate valuation method should be, the panel was not sufficiently persuaded by the appellant’s argument that the appeal property should be valued on a zoned basis. It was clear to the panel that both parties agreed that the valuation could be conducted using either method. The appeal property benefits from two frontages, it has multiple entrances and is affected by masking; these factors would add complexity to the zoned method, as would the overall shape. The panel is aware that there are other retail units in the locality that are valued on the overall basis just as there are others that are zoned. Having reached the above conclusions, the panel was satisfied that the current overall basis was the correct approach for the appeal property.

18. Having determined that the overall method was the correct approach, the panel went on to consider the current main space rate that should be applied. The appeal property was valued at a rate of £230/m^2. However, the panel was of the opinion that this rate appeared excessive. The panel accepted that as at the material date there had been a decline in the retail sector in the locality. Whilst this factor appeared to have been reflected in the assessments applied to the surrounding retail units, it had not been reflected in the appeal property’s assessment which had seen an increase since the previous rating list.

Disposal

19. In view of the above findings and taking a ‘stand back and look approach’, the Tribunal panel is satisfied that the current assessment is unreasonable. The panel allowed the appeal in part, determining that the main space rate should be reduced to £185/m^2, resulting in £67,000 RV. This panel determined that this reduced assessment more accurately reflected the locality as at the material date. The revised assessment is shown below.

Description	**Area m^2**	**£/m^2**	**Value £**
Ground - Sales	291.16	185.00	53,865
Basement - Store	218.59	46.25	10,110
Basement - Mess / Staff Room	17.69	46.25	818
Basement - Office	5.29	64.75	343
Sub-total			65,136
Air Conditioning System	291.16	7.00	2,038
Total			**67,174**
Say £67,000 RV with effect from 1 April 2017			

Order

20. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry to £67,000 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: 9 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.
