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 dismissed.

APPEAL NUMBER:	CHG101065471
RE:	Next PLC, Alemouth Road, Hexham, NE46 3PL (the "appeal property")

BETWEEN:	Next PLC	Appellant
	and	
	Amanda Hitchings (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:	Ms Victoria Williams of GL Hearn Ltd, on behalf of the appellant as both advocate and expert witness Mr Oliver Ridley, on behalf of the respondent as both advocate and expert witness

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DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The Tribunal panel determined that the appeal property's assessment should remain unaltered at £224,000 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 retail warehouse and premises, RV £224,000, at a base rate of £120/m^2. The appellant is seeking a reduction in the base rate to £100/m^2. The valuation officer determined the challenge to be not well-founded and so the appellant appealed to this tribunal. The appeal was registered on 22 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. Ms Williams was appearing before the panel as both advocate and expert witnesses. Therefore, it was important to ascertain if there was a success related fee involved and if so whether its existence was compatible with her 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). Ms Williams confirmed that she was not a on a contingency fee basis. She also declared that she understood and fully accepted that her duty was to the Tribunal in giving evidence, and that she 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.

Background

7. The appeal property is a retail warehouse and premises in the market town of Hexham. The property is situated within the curtilage of Tesco Extra and opposite Aldi. Measured according to net internal area, it is 1866m^2 in terms of main space (ITMS).

8. The evidence before the panel comprised of the information disclosed and exchanged during the challenge process. The submissions included an image from Google Earth (birds-eye view of the general area), rating assessments in support of tone, the parties' skeleton arguments, a schedule of comparable rental evidence, and a copy of the current and proposed valuations.

Relevant Law

9. 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).

10. 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

11. 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. This case had established six propositions that gave clear guidance to be followed when assessing rateable value. Bearing these six propositions in mind, the panel acknowledged that the rent on the appeal property is accepted to be the correct starting point, with consideration given to how that rent relates to the terms of the statutory definition of rateable value. The panel acknowledged that the appeal property is let under a 10-year lease with effect from 21 February 2013 at a rent of £180,000 per annum. As part of the incentive to take the lease, the tenant received three years rent free; the rent review in February 2018 agreed nil increase. The two parties each arrived at a slightly different figures when they analysed the rent, with the appellant's representative stating it to be £72.96/m^2 and the valuation officer £80.10/m^2. The panel noted that the rent was determined over two years before the AVD, and a generous incentive was included. The panel also understood that a renewal rent is generally given less weight than a new letting, thus, having regard to these points, the panel attached less weight to the appeal property's rent.

12. The panel then went on to examine the third proposition outlined in *Lotus and Delta* and considered the rental evidence on comparable properties. These properties were all within less than half a mile from the appeal property. Unit 1 Tyne Valley Retail Park is larger than the appeal property, measuring 1,962m^2 ITMS. The rent was agreed in March 2014 on a 15-year lease at £250,000 per annum. The rent analysed to £97.15/m^2, in line with the agreed assessment of £100/m^2.

13. Details of three other units (numbers 2 to 4) on Tyne Valley Retail Park were provided. The panel noted that all these units are considerably smaller than the appeal property (a third of the size or smaller). The rents had been agreed between March 2014 and February 2016 and analysed to £133.41/m^2, £125.87/m^2 and £149.47/m^2, and the corresponding assessments had been valued at base rates of £130/m^2, £130/m^2 and £155/m^2. The panel knew that there would be a quantum factor to consider due to the variation in size between the four units on Tyne Valley Retail Park and the appeal property. The respondent's representative further argued that the location of these properties was not quite as good as the appeal property and argued that the shops were 'niche', catering to a more limited market and so benefitting from less passing trade.

14. The final comparable property offered was the B&M store at 1 Maidens Place. Similar in size to the appeal property, it had an analysed rent of £116.49/m^2 and had been valued at a base rate of £114.50/m^2. The assessment was agreed in March 2020 following a challenge which saw the base rate reduced from £120/m^2. The rent of £249,125 dated from February 2016.

15. The parties had competing arguments in relation to the location of this property in comparison to the appeal property. The appellant's representative disagreed with the valuation officer's contention that Maidens Place was an inferior location to that of the appeal property. However, the panel understood from the evidence submission and the oral evidence that the appeal property is located on the edge of a large central car park shared by Tesco and Aldi. Three hours free parking is available. B & M is on a different site, behind the hospital and has one neighbour, Marks and Spencer. Parking on this site is not free. Based on these factors the panel determined that the appeal property did benefit from a superior position. The panel therefore found this evidence demonstrated that the base rate of

£100/m2 as requested by the appellant's representative was too low and not supported in evidence. Having regard to the basket of rents, the panel found it supported the current base rate of £120/m2 for the appeal property. The panel determined that the current rate truly reflected its location and attributes.

Disposal

16. In view of the above findings and conclusions, and considering the whole basket of evidence, the panel determined that the current assessment was not unreasonable and dismissed the appeal.

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.