VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal: Local Government Finance Act 1988; dental surgery in 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:	CHG101066369	
RE:	Unit 3 & 4 Eastway Retail Hub, Eastway, Preston, PR2 3FB (the "appeal property")	
BETWEEN:	Balldent Ltd	Appellant
	and	
	Joanne Moore Valuation Officer	Respondent
SITTING:	*remotely using Microsoft Teams*	
ON:	12 November 2024	
BEFORE:	Ms TM Blades, Presiding Senior Member Mrs B Dhoofer-Sagoo, Senior Member	
CLERK:	Mrs D Davies IRRV(Hons) BA (Hons)	
APPEARANCES:	Mr Ken Batty, chartered surveyor (on behalf of the appellant as both advocate and expert witness) Mr Andrew Glover (on behalf of the respondent as advocate)	

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 £57,500 Rateable Value (RV) with effect from 25 April 2022.

Introduction

3. This is a 2017 rating list appeal. The appeal property has been entered in the 2017 list from 25 April 2022 as a surgery and premises, RV £57,500, at a base rate of £250/m^2. The appellant is seeking a reduction in the base rate to £175/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 15 August 2023, the grounds being that the current valuation for the hereditament is not reasonable, under Regulation 13A of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009.

4. Mr Batty 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 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 Batty confirmed that he was acting on an existing contract and was being paid on a conditional basis for this hearing. 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 his client's case.

5. 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

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

Background

7. The appeal property is a dental surgery and premises set in a small block of retail stores. Completed in 2022 it is of rendered brick and block construction with a flat metal roof. It has heating, air conditioning and shared car parking for customers. Measured according to gross internal area (GIA), it is 226.86m^2. Included in this area is 9.98m^2 (staff toilets, baby-changing, lockers, cleaners' area) which the appellant's representative contends should be either excluded completely or included at a nominal rate.

8. The evidence before the panel comprised of the information disclosed and exchanged during the challenge process. The submissions included photographs of the appeal property and locale, a plan of the property, rating assessments in support of tone, the parties' skeleton arguments, 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 appeal, the material day is 25 April 2022.

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 outlined the weight to be attached to rental and assessment evidence. This case established six propositions that gave clear direction to be followed when assessing rateable value.

12. 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 passing rent of £57,160 was set with effect from 25 April 2022, seven years after the AVD and, as such, concurred with the view of both parties that little weight should be applied to it as a starting point.

13. The panel then went on to examine the third proposition outlined in *Lotus and Delta* and considered the rental evidence on comparable properties. The appellant's representative had identified several comparable properties situated in Preston, albeit several miles from the appeal property. Mr Batty contended that the location of the appeal property was inferior in terms of 'pulling power', a statement disputed by the valuation officer who countered that the appeal property was close to junctions of the M55 and A6, and on the doorstep of the large residential area of Fulwood.

14. The Capitol Centre is approximately 2.5 miles from the appeal property. The appellant's agent referred to that as a better location. The valuation officer provided rental details for units 8 and 9, both of which are smaller than the appeal property. Unit 8 measures 147.5m^2. The rent of £54,495, agreed on 9 September 2015, analyses to £338.05/m^2 and it is assessed at £300/m^2. Unit 9, measuring 98m^2, is also assessed at 300/m^2. The rent was reviewed in 2014 and agreed at £35,000, which analyses to £357.14m^2.

15. Rental details were provided for two larger retail outlets on Corporation Street, which is on the periphery of the town centre and held by the respondent's representative to be a less favourable location than that of the appeal property, a statement not disputed by the appellant's agent. Unit 3A at 73 Corporation Street measures 422.7m^2. The rent of £65,00, set in September 2014, analyses to £119.06/m^2, in line with the assessment of £120/m^2, RV £54,000. Unit 3B measures 437.9m^2 and is assessed at £115/m^2. The rent was reviewed with effect from September 2013 and analyses to £109.52/m^2.

16. The valuation officer provided rental details for two properties on Deepdale retail park, a little outside of the city centre. Unit FC2D is a little larger than the appeal property at 277.7m^2. The review rent of £75,000 was agreed with effect from 15 March 2015; it analyses to £327.69/m^2, slightly less than the applied assessment of £355/m^2. On the same site, the rent on the much larger Unit C1B analyses to £277.31/m^2 and the assessment is £290/m^2.

17. The panel observed that the rental evidence covered an array of differently sized properties: the Corporation Street properties were almost twice the size of the appeal property, so the panel acknowledged quantum to be a factor. The closest in size to the appeal property was Unit FC2D at Deepdale, where the assessments appeared to be much higher than at the appeal location. Unit 8 at the Capitol Centre is approximately two thirds the size of the appeal property; the rent of £54,495 is slightly less than the rent of £57,150 determined for the appeal property. The panel found that this rental evidence supported £250/m^2 for the appeal property.

18. In line with *Lotus,* the panel moved on to consider the assessments on other comparable properties. The appellant's representative had argued that the tone of the compiled list was for a maximum of £200/m^2 for properties comparable to the appeal property, believing that £175 per m^2 was the appropriate rate.

19. Mr Batty described Unit B, Alliance Retail Park, Chorley as a 'really good comparable' in terms of location, accessibility and footfall. This property was assessed at £150/m^2. The panel however noted that it was situated in a neighbouring town, approximately 10 miles from the appeal property, and was over twice the size.

20. Two properties on Mariners Way, also just outside of the city centre, were assessed at £200/m^2. Both properties were larger than the appeal property, one measuring 407m^2 and the other 698m^2. The panel considered that the adopted assessments would allow for an element of quantum, therefore suggesting that £250/m^2 was not unreasonable for the smaller appeal property.

21. Mr Batty contended that, as the only double unit in the parade, the appeal property should have an allowance of 5% for size. Mr Glover contended that such allowances 'were a thing of the past', a statement disputed by the appellant's representative, who said he was aware of similar allowances having been awarded. He conceded however that he had not submitted the evidence to which he was referring. The panel was of the opinion that a blanket approach should not be adopted, with such an allowance only being granted if the evidence suggests it is warranted. In this case there was no such evidence before the panel.

22. The panel considered the appellant's argument that an area of 9.98m^2 in respect of staff toilets, baby-changing area, lockers, cleaners' area should be either excluded completely or included at a nominal rate. The panel understood that the RICS Code of Measuring Practice provided that the method of measurement for retail warehouse premises is GIA. It therefore determined that the 9.98m^2 should not be removed from the overall measurement. The panel was not persuaded that a nominal rate was appropriate for the area in dispute.

23. The panel knew that rental evidence carried the most weight, and, having regard to the basket of rents, the panel found that it supported the current base rate of £250/m^2 for the appeal property. The panel considered that the tonal evidence further supported £250/m^2.

Disposal

24. 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: 6 December 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.