VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List appeal: shop and premises; Lotus & Delta Ltd v Culverwell (LO) and Leicester City Council [1976]; rental evidence; assessments of comparable properties; unadjusted rate in dispute; appeal dismissed.

APPEAL NUMBER:	CHG101067015	
RE:	4, Great Square, Braintree, CM17 1TX (the "subject property")	
BETWEEN:	Spicerhaart and	Appellant
	Joanne Moore Valuation Officer	Respondent
SITTING:	*remotely using Microsoft Teams*	
ON:	10 May 2024	
BEFORE:	Ms R Sharma (Presiding Senior Member) Ms A Verma (Senior Member)	
CLERK:	Mrs J Smith IRRV(Tech)	
APPEARANCES:	Mr S Cyrille of Altus Group (representing the appellant) Mr J Kent (representing the Valuation Officer)	

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The panel confirmed a rateable value (RV) of £29,750 for the subject property with effect from 1 April 2017.

Introduction

3. This is a 2017 rating list appeal. 4 Great Square, Braintree CM7 1TX (the subject property) had entered the 2017 rating list as ‘shop and premises’ at £29,750 RV with effect from 1 April 2017.

4. The challenge proposal was submitted by Altus Group on behalf of Spicerhaart and was received by the Valuation Officer on 25 May 2023. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was inaccurate. A revised RV was proposed of £16,500 with effect from 1 April 2017.

5. The Valuation Officer issued a challenge case decision notice on 22 September2023 which disagreed with the proposed alteration of the list. The material date was 1 April 2017.

6. 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.

7. Mr Cyrille, of Altus Group, appeared on behalf of the appellant as both advocate and expert witness. In view of the Upper Tribunal’s judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr Cyrille confirmed that he was instructed under a contingency fee basis 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 the client’s case.

8. 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).

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

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

Background

11. The subject property is a 2-storey retail unit of brick and concrete completed in the 1970’s. It is located in the town centre of Braintree in Essex. Car parking is readily available in the locality and Braintree Train Station is situated within 10 minutes’ walking distance. At 1 April 2017 the hereditament consisted of ground floor retail space with ancillary office space on the first floor. The total area of the property is 179.70m^2 and it is valued at an unadjusted rate in terms of Zone A (ITZA) at £350.00/m^2.

12. The appellant’s representative had argued that the unadjusted rate adopted is excessive based on the lease of the subject property and sought a reduction to £190.00/m^2 which resulted in his proposed assessment of £16,500 RV with effect from 1 April 2017.

13. The Valuation Officer defended the present assessment of £29,750 RV with effect from 1 April 2017.

Relevant Law

14. The term ‘rateable value’ is defined in Schedule 6 to the Local Government Finance Act 1988 (as amended):

“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;

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”.

Discussion

15. The panel had to determine the rateable value for the appeal property, which represented a rent that a hypothetical landlord and tenant would agree, as at the AVD, 1 April 2015. The common date was used to ensure that every property was treated in a consistent way.

16. The Lands Tribunal judgment in *Lotus and Delta* v *Culverwell (VO) and Leicester City Council* [1976] RA 141 provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property was considered to be the correct starting point but, where available, rents on similar properties were also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence could then be weighted.

17. Mr Cyrille had referred to the rent of the subject property, which was a new letting from 22 January 2014 for an initial term of 10 years with a 13 month rent free period and a rent review after 5 years. The passing rent, which commenced in March 2015, was £20,000 per annum, which he had analysed at £190.22/m^2. Mr Cyrille suggested that, in light of this rental evidence, an adopted rate of £190/m^2 ITZA was appropriate for the subject property.

18. Mr Cyrille argued that, having regard to the authoritative guidance in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA141 the rental evidence of the subject property was the best evidence and that this strongly supported his assertion that the current assessment was excessive.

19. However, the panel was aware from *Lotus v Delta* that whilst the best evidence was the subject rent, especially when close to the AVD, this was a starting point, and where available, rents on similar properties should also to be taken into account and weight applied to the entire basket of evidence according to its merits.

20. In terms of indirect rental evidence, Mr Kent had referred to the rents passing on five other properties in Great Square and one in New Street, as set out on the table below:

Address	RV	Area (m2)	Rent	Effective Date	Analysed rent	ITZA (m2)
5 Great Square	£26,000	214.80	£31,000	27/01/2016	£414.60	£350.00
8 Great Square	£44,500	355.70	£61,000	08/12/2013	£496.06	£350.00
15/16 Great Square	£22,250	125.50	£22,500	24/06/2013	£338.93	£350.00
17 Great Square	£11,750	69.40	£12,200	24/06/2016	£361.57	£350.00
Esquire, Great Square	£8,600	24.80	£8,000	01/09/2015	£311.29	£350.00
1, New Street	£18,250	233.50	£24,000	25/03/2015	£449.44	£335.00

21. The panel found that this evidence of rents to be persuasive, in particular 1 New Street, which was slightly larger than subject property. It had a new lease made on 25 March 2015 and the rent analysed at £449.44/m^2. This property was situated on the High Street, in a less favourable location away from the square, which Mr Kent pointed out had been reflected in the lower unadjusted rate of £335/m^2 ITZA. The total value for this particular property was further adjusted by 5% due to its poor layout.

22. In considering Mr Kent's remaining rental evidence, the panel found that the rents of all the other comparable properties in Great Square had analysed much higher than the subject property and all had an adopted unadjusted value of £350/m^2. Whilst the panel acknowledged that some of these rents had been agreed as early as June 2013, which was some time prior to the AVD, the analysed rent on the subject property was significantly lower at £190.22/m^2, which suggested to the panel this was out of line with all the other rents.

23. Mr Cyrille suggested that the rent agreed on the subject property reflected the economic climate as at the AVD. However, he had provided no evidence to support this assertion and the panel found that Mr Kent's rental evidence, which had been agreed both before and after the AVD suggested otherwise.

24. It was clear to the panel that all the analysed rents for the neighbouring properties were considerably higher and that a tone of £350/m^2 had been established for properties of this type in the immediate vicinity. The burden of proof is on the appellant to persuade the Tribunal that the assessment was unreasonable. In this case, the panel was not persuaded by the argument put forward by Mr Cyrille, which relied solely on the rental evidence on the subject property.

Disposal

25. In view of the above findings the panel concluded that it had not been demonstrated that the present RV of £29,750 was unreasonable and therefore the appeal was dismissed.

Date issued to parties: 4 June 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.
