VALUATION TRIBUNAL FOR ENGLAND

2023 Rating List Appeal: Local Government Finance Act 1988; tone of the valuation list in the locality; weight to be applied to the rent agreed on the subject property; Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council 1976; appeal: dismissed.

APPEAL NUMBER: CHG101072268

RE: 22 Victoria Road West, Thornton Cleveleys, Lancashire FY5 1BU (the "subject property")

BETWEEN: Irina Drebnets Trading as Bali Wood Carving — Appellant

and

Amanda Hitchings BA (Hons) MRICS (Valuation Officer) — Respondent

SITTING: *remotely using Microsoft Teams*

ON: 19 June 2024

BEFORE: Mr AN Backway, Presiding Senior Member
Mrs C Parkes, Member

CLERK: Mrs A Sloan IRRV(Hons)

APPEARANCES: Mr H Winterbottom (of RVA Surveyors, representing the appellant)
Mr A MacRury (representing the Valuation Officer)

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The panel found that the entry in the 2023 rating list was not unreasonable and confirmed the Rateable Value (RV) at £14,250 with effect from 1 April 2023.

Introduction

3. The appellant had made a challenge against the accuracy of the assessment in the 2023 Rating List, by way of a proposal, served on the Valuation Officer (VO) on 12 June 2023.

After considering the proposal and evidence submitted during the challenge period, the VO decided that the proposal was not well founded and a decision notice to that effect was served on the appellant on 25 September 2023. That decision was appealed to the Tribunal on 22 January 2024, on the grounds that the current valuation for the hereditament was not reasonable.

4. The subject property is a shop and premises situated in a parade of similar shops in Victoria Road West. The facts of the property were not in dispute, but the parties could not agree on the Zone A price to be applied to the valuation.

5. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), the clerk asked the appellant's representative prior to the hearing to clarify the basis on which he would be appearing before the panel. Mr Winterbottom confirmed by email that he would be appearing in a dual capacity as both advocate and expert witness for the appellant. The email also confirmed that his firm was instructed on a success related fee arrangement.

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. It was allowable due to the Tribunal's rules on admissibility of evidence (regulation 17(2)(a) where the Tribunal could admit evidence whether or not it would be admissible in a civil trial). The panel therefore considered the expert evidence and attached such weight as it saw fit.

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

Issue and Relevant Law

8. The issue before the panel was to determine the correct valuation for the subject property with effect from 1 April 2023. In respect of an appeal against an entry in the 2023 rating list, the rental levels are to be taken as those passing at the antecedent valuation date (AVD) of 1 April 2021.

9. 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 1992/556) as amended. In respect of the subject appeal, the material day is 1 April 2023.

10. When the proposal was made on behalf of the appellant, there were two issues in dispute. Firstly, the correct Zone A price to be applied to the valuation and, secondly, a proposed end allowance of 10%. Mr Winterbottom confirmed at the hearing that he no longer sought an end allowance, but he contended the existing entry in the list at £14,250 was unreasonable based on a Zone A price of £240/m^2. He sought a reduction in the Zone A price to £180/m^2, resulting in an RV of £10,750.

11. The subject property 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 of the Local Government Finance Act 1988).

12. Both parties referred the panel to the Lands Tribunal judgment of *Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council* [1976] RA 141. This case had established six propositions, which gave clear guidance to be followed, namely:

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

    (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 s.19(6) of the General Rate Act 1976 the more weight should be attached to it.

    (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 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 attributed to the differing types of evidence depending on the one hand on 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 such circumstances, it would be clearly more difficult to reject the evidence of the actual rent.'

Discussion

13. Mr Winterbottom contended that, as there was a rent passing on the subject property agreed close to the AVD, it carried the most weight. The appellant holds the subject property on a lease agreed 4 November 2020, five months before the AVD. Mr Winterbottom stated that the appellant was fresh to the scene as a new tenant and the lease was agreed on full repairing and insuring (FRI) terms on the open market. The rent paid is weekly in advance and equates to £11,000 per annum.

14. In support of his case for a reduction, Mr Winterbottom referred the panel to two examples in Victoria Road West and cited the marketed rental price against the rents actually achieved on those properties. 34-36 Victoria Road West was marketed with an asking price in November 2018 of £30,000 but the FRI lease actually agreed in March 2019 was £20,000. He submitted that this demonstrated the rental market was falling in the parade.

15. The second property relied upon by Mr Winterbottom was 24a Victoria Road West. This property was marketed in September 2018 at £17,500 but in 2019 the rent agreed was £9,500 per annum. He submitted that these examples demonstrated values were falling in Victoria Road West and, had the subject property let in 2019, the existing valuation may be reasonable. However, Mr Winterbottom's position was that by the AVD, values would have fallen further and as such the existing valuation is excessive.

16. Mr Winterbottom stated that there are three different Zone A rates applied in the parade of shops, depending on their proximity to the promenade. Numbers 2 to 14-16 are valued at a Zone A price of £160/m^2, as the furthest from the promenade. Numbers 18 to 34-36 are valued on £240/m^2 and numbers 38 to 50, being closest to the promenade, are valued on £475/m^2. To illustrate this point, Mr Winterbottom sought permission to provide the panel with a map showing the location and the Zone A price for the three groups of shops, which was not in the evidence on file when the appeal was lodged by his colleague. As Mr MacRury had no objection, the panel agreed to admit this document and Mr Winterbottom emailed the map to Mr MacRury and the clerk, who forwarded it to the panel.

17. Mr Winterbottom contended that the shops at 24a and 34-36 Victoria Road West were in the same parade as the subject property and he felt that, considered with the rent agreed on the subject property, he had demonstrated a falling market from 2018 to 2020. He therefore considered that the subject property's rent, agreed close to the AVD, was the strongest evidence of the value on 1 April 2021. He asked the panel to reduce the Zone A price from £240/m^2 to £180/m^2, bringing the RV closer to the rent agreed on the subject property.

18. Mr MacRury confirmed to the panel that the subject property had last been inspected by the VO on 3 November 2021 and the floor areas were agreed at Check stage. While a copy of the lease had been provided to the VO, it was not in evidence before the panel. Mr MacRury confirmed that the lease was for seven years, and the VO's analysis was a Zone A price of £168/m^2, which he acknowledged falls some way below the current valuation based on £240/m^2. In accordance with *Lotus & Delta,* he accepted the rent agreed on the subject property must be the starting point of any valuation. However, he contended that the rent should be compared with others in the locality on similar shops to determine if it was out of kilter with the tone in the locality.

19. In support of his case to maintain the existing valuation for the subject property, Mr MacRury referred the panel to rental evidence for 18 and 30a Victoria Road West. Number 18 is adjacent to the subject property and was a new letting from June 2020. The rent was for a rolling tenancy and was adjusted to reflect external repairs and insurance to arrive at the adjusted rent of £10,888. The VO had analysed this to a Zone A price of £243.08/m^2. Also in the same parade, 30a Victoria Road West had a new letting from November 2021 on a two-year lease. After adjusting for external repairs and insurance, the VO arrived at an adjusted rent of £14,640 and analysed the Zone A price to £384.05/m^2. Mr MacRury contended that these rents, on properties in the same parade as the subject property, supported the existing valuation and he asked the panel to dismiss the appeal.

20. The panel noted that the rents relied upon by the VO were both more removed from the AVD than the subject property's rent and both required adjustments. However, it also noted that the rents for 24a and 34-36 Victoria Road West, relied upon by Mr Winterbottom, were agreed in 2019; further from the AVD than the VO's comparable properties. While accepting that Mr Winterbottom was attempting to illustrate the falling market, the panel found that asking prices carried little weight, as they often differ from the rent negotiated between tenant and landlord when entering into a lease agreement.

21. Mr Winterbottom referred the panel to the judgment in *Specialeyes PLC v Felgate* (VO) [1992] RA387, where the Lands Tribunal placed more weight on rents agreed before the statutory valuation date than after. The panel noted that he had provided rental values agreed on numbers 24a and 34-36 Victoria Road West from 2019 but placed less weight on

these examples as they were further from the AVD than the rents agreed in 2020 on the subject property and 18 Victoria Road West.

22. The panel noted that the subject property is much larger than the VO's comparable properties, measuring 162.30m^2 compared to 52.70m^2 for number 18 and 95.74m^2 for number 30a Victoria Road West. However, they are in the same parade as the subject property and are therefore similar retail shops, comparable to the subject property. It found the most useful comparison was the adjacent shop at number 18. The rent agreed on number 18 in June 2020 was £11,900, compared to £11,000 for the subject property five months later.

23. After adjusting the rent for number 18 Victoria Road West to bring it in line with the 'clean' rent agreed on the subject property, there was just £112 difference. Mr Winterbottom's evidence compared the areas in terms of Zone A (ITZA) with the subject property at 60.14m^2 and number 18 at 44.79m^2, demonstrating a larger frontage to the street. The panel found that it was unlikely the subject property, benefitting from more frontage and internal space, would be less valuable than number 18. From the map provided, the panel noted that the tone was applied to reflect the value relating to distance from the promenade, with the three parades being broken by Kings Road and Slater Road. It also noted that the VO, in acknowledgement of the falling market in the parade between rating lists, had reduced the Zone A price for the subject property's parade from £260/m^2 in the 2017 list to £240/m^2 in the 2023 list. After considering all the evidence presented, and the basket of rents available, the panel found that the current valuation was supported by rents agreed on nearby shops.

Disposal

24. In view of the above findings and conclusions, the panel is satisfied that the current valuation in the list at £14,250 is reasonable and the appeal is dismissed.

Date issued to parties: 3 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.
