IN THE VALUATION TRIBUNAL FOR ENGLAND
IN THE MATTER OF A 2017 RATING LIST APPEAL

Case No: CHG101082676

Sitting remotely using Microsoft Teams

Date: 9 May 2025

SCHEDULE 11 TO THE LOCAL GOVERNMENT FINANCE ACT 1988

RATING — Local Government Finance Act 1988 — 2017 Rating List – shop and premises – rental evidence – tone of the rating list – Zone A rate to be applied to the valuation - Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council [1976] RA 141

Before:

MR W J READ

Between:

ESPRESSO ROOMS UK LTD **Appellant**

- and -

ANDREW RICKETTS (VALUATION OFFICER) **Respondent**

Regarding:
GROUND FLOOR 77 SHAFTESBURY AVENUE, LONDON W1D 5DU
(the "subject property")

Mr A Marshall, of Conneely Tribe, for the appellant
Mr C Cates, for the Valuation Officer

Hearing date: 15 April 2025

DECISION AND STATEMENT OF REASONS

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Decision

1. The appeal is dismissed.

2. I found that the entry in the 2017 rating list was not unreasonable and confirmed the rateable value (RV) at £146,000 with effect from 27 December 2018.

Introduction

3. I heard this appeal alone as my fellow panel member was unable to attend at short notice. The Tribunal's business arrangements permit me to hear this appeal alone in such circumstances.

4. The appellant made a proposal to challenge the entry in the 2017 Rating List of £146,000 with effect from 27 December 2018. The proposal sought a reduction in the Zone A price to be applied to the valuation of this entry. The Valuation Officer (VO) did not find the proposal to be well founded, and a Challenge decision was issued on 4 September 2024 maintaining the existing entry in the rating list. An appeal against that decision was received by the Tribunal on 5 November 2024.

5. Mr Cates stated that he was appearing as Advocate for the respondent, presenting evidence prepared by a colleague.

6. In view of the Upper Tribunal's judgment in *Gardiner & Theobold LLP v Jackson (VO)* [2018] UKUT 0253 (LC), Mr Marshall declared that he was also appearing for the appellant as Advocate but had knowledge of the case and relevant experience to assist the Tribunal with questions. He confirmed that his firm was instructed under a conditional or other success-based fee arrangement and that he understood his duty was to the Tribunal, regardless of whether the evidence supported his client's case.

7. The subject hereditament is a café on the ground and basement floors of 77 Shaftesbury Avenue in London, between Soho and Chinatown. It is described in the rating list as a shop and premises and the survey details were not in dispute. The size was submitted at $152.81m^2$ total area, and $67.60m^2$ in terms of main space (ITMS).

8. The issue to be determined by the Tribunal was the correct Zone A price to be applied to the valuation in the 2017 rating list. The current entry in the list was based on a Zone A price of £2,160/m^2. The appellant's representative sought a reduction to £950/m^2, resulting in a revised RV of £64,500.

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

__Late submission__

10. After the hearing had concluded, on 24 April 2025, Mr Marshall sent an email to the Tribunal, copied to Mr Cates, to clarify a point discussed before me. Mr Cates had suggested at the hearing that the VO had not been supplied with a copy of the lease agreed on the subject property, despite having requested it before the Challenge decision was issued. Mr Marshall submitted that the VO's case worker had requested a copy of the lease on 10 January 2024, when Mr Marshall's colleague was out of the office and not returning until 22 January 2024, which was confirmed on the automated out of office reply. Mr Marshall's email submits that

the VO's case worker then closed the case and issued the decision notice on 17 January 2024, before his colleague returned from leave and had an opportunity to submit the lease.

11. While I appreciate Mr Marshall's desire to clarify the point, it is unorthodox for a party to be making further submissions after the hearing has concluded. Further, I was confused by the dates referenced by Mr Marshall. The VO's decision on this matter was clearly issued on 4 September 2024, as evidenced by the email chain provided with Mr Marshall's email, setting out the email exchanges between the parties in September 2024. The relevance of the January 2024 dates was therefore unclear, as the Challenge had not yet been concluded at that point.

12. In any case, once the appeal was lodged, the Tribunal's Notice of Hearing dated 4 February 2025 enclosed directions which permit a party to make an application to admit further evidence no later than four weeks before the hearing date. Under Regulation 17a of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, that evidence must have been unavailable to the party prior to the issue of the decision notice but evidence can also be permitted by agreement between the parties. There was no evidence that the appellant's agent had discussed with the VO, after lodging the appeal, the possibility of submitting the lease for the subject property into evidence or serving it on the VO to facilitate a potential settlement of the dispute. I therefore noted Mr Marshall's submission that he felt the decision notice was issued prematurely but found that, irrespective of the exchanges between the parties, the appellant's representative had not provided the lease for the subject property to the VO or the Tribunal for consideration.

Relevant Law

13. The subject property must be valued by the statutory assumptions set out in in Schedule 6 to the Local Government Finance Act 1988 as follows:

"(1) 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."*

14. The material date on which to consider the physical state of the hereditament and its locality was 27 December 2018, when the entry was made in the rating list. The valuation date for the 2017 rating list is 1 April 2015, the antecedent valuation date (AVD).

15. Both parties referred to the Lands Tribunal judgment of *Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council* [1976] RA 141, which provided guidance on the weight to be applied to different forms of evidence.

Discussion

16. The dispute in this appeal arose due to the parties' different approaches to the valuation of the subject property. Mr Marshall placed most weight on the lease agreed on the subject property from November 2017, which he contended evidenced the value of the unit following the redevelopment of 77 Shaftesbury Avenue. He explained that, prior to the redevelopment, there were a number of retail units in the same section of the street but, since the works, the subject property was in an isolated position and should not be compared with shops on the opposite side of the street. The VO's position was that the rent agreed on the subject property was not close to the AVD and better evidence of value could be found from comparison with similar retail units in Shaftesbury Avenue.

17. I noted that the subject property is located within an office building redeveloped in 2016. The offices are over eight floors, with the subject property located on the ground and basement levels. The appellant's representative relies on the rent agreed on the subject property post redevelopment of the building in November 2017 and contends that the VO's approach to value both sides of the street at the same rate is no longer appropriate. He considers that the subject property is in an isolated location, being the only retail or café unit on the north side of Shaftesbury Avenue between Cambridge Circus and Dean Street. It was argued that the location is a secondary pitch compared to the examples relied upon by the VO to support the existing valuation.

18. I was provided with the following information concerning the subject property's rent. The unit was marketed from January 2017 at an asking rent of £80,000. The appellant agreed a lease for ten years from 27 November 2017 with an initial rent of £90,000 per annum. This rent was payable after a three-month rent-free period for fitting out purposes. There was no tenant break option, and the lease is inside the Landlord and Tenant Act. The appellant's representative submitted that the rent was agreed at a sum higher than originally marketed due to the rising market conditions between January and November 2017. He contended that the rent achievable on the AVD of 1 April 2015 would be lower than £80,000 and, using £80,000, he calculated a Zone A price of £1,180/m^2, lower than the current valuation in the list.

19. Mr Marshall submitted that the same Zone A price should not be applied to both sides of the street, as in previous lists, when there was evidence to show there was a value difference. To illustrate this point he referred me to the example of 96 Shaftesbury Avenue, which had a rent agreed in September 2017 and was located opposite the subject property. Number 96 was let for a term of 10 years from 23 August 2017 at £71,000 per annum, with the first six months at half rent as the equivalent to three months rent free. The appellant's representative analysed the rent on number 96 to £3,400/m^2 and submitted that this demonstrated the subject property's value was around 39% of the value on that unit. On this basis, it was argued that there would be a similar difference in value at the AVD and 39% of the Zone A price for the block (£2,340/m^2) would be £912.60/m^2, making the proposed RV at £64,500 based on £950/m^2 reasonable.

20. While I followed Mr Marshall submissions on this matter and accepted that the starting point of any valuation must be the rent agreed on the subject property, I was not persuaded by his analysis. The subject property's rent was agreed over two years post AVD, as was the rent on number 96 Shaftesbury Avenue, and therefore required adjustment to reflect the values in 2015. As pointed out in the VO's decision notice, the subject property's valuation in the 2010 list was £1,800/m^2 and to adopt the proposed Zone A price of £950/m^2 in the 2017 list would

mean the market had fallen significantly between the AVDs of 1 April 2008 and 1 April 2015. Although I did not place weight on the 2010 valuation, I found that it seemed illogical to consider that the value of the subject property prior to the redevelopment of 77 Shaftesbury Avenue would be higher than after the improvements. I appreciated Mr Marshall's argument that the subject property is the only retail unit on that side of the road now, but I did not consider it to be "isolated". Being a café located within an office building, I considered the unit to be in a desirable location attracting custom from within the building as well as passing trade.

21. As the rent on the subject property was not particularly close to the AVD, I looked at the basket of evidence available and the examples presented by the VO. The VO analysed the subject property's rent from November 2017 to £1,331.36/m^2 and submitted that no copy of the lease had been provided and there was no Form of Return (FOR). In contrast three rents were presented on retail units in Shaftesbury Avenue, one being a new lease and two being rent reviews.

22. I considered the most useful example to be the new lease agreed on Basement and Ground Floor, 90-92 Shaftesbury Avenue. This lease was effective from 1 June 2014 and was agreed for a five-year term with no adjustments required. The VO analysed this rent to £2,921.21/m^2. This lease, agreed less than a year before the AVD, supported the Zone A price of £2,340/m^2 applied to its valuation. The unit was smaller than the subject property at 33.00m^2 ITMS.

23. Closer in size to the subject property's ITMS measurement were Basement and Ground floors 100-102 Shaftesbury Avenue and Basement and Ground Floor 124 Shaftesbury Avenue. The former measuring 61.20m^2 ITMS and the latter 54.05m^2 ITMS, compared to the subject property's 67.60m^2 ITMS.

24. The unit at numbers 100-102 was a rent renewal from 1 July 2015, which the VO analysed at £2,616.42/m^2. The unit at number 124 was a rent renewal from 24 June 2015, analysed to £2,368.18/m^2. Both were also valued at a Zone A price of £2,340/m^2. Although these rents were renewals, rather than new lettings, I found them useful evidence of the rents passing on shops on the opposite side of the street to the subject property. All three rents dated to within a year of the AVD, and in the case of the two lease renewals, mere months after the AVD. I found these to be stronger evidence than the subject property's rent agreed some two years later.

25. The VO's evidence also contained examples to demonstrate the tone of the list in this location. Much smaller than the subject property at 27.66m^2 ITMS, Ground Floor 67 Shaftesbury Avenue was valued at £2,280/m^2 and had not been challenged in the 2017 rating list. Ground Floor 65 Shaftesbury Avenue, 38.74m^2 ITMS, was subject to a proposal and agreed at £2,000/m^2. Closest in size to the subject property was Ground Floor 55-57 Shaftesbury Avenue, at 65.60m^2 ITMS, and this unit was valued at £2,280/m^2 with no challenges.

26. In considering the weight to attach to the subject property's rent, I noted the points highlighted by Mr Cates in questioning Mr Marshall. The appellant's representative submitted that the subject rent included a three-month rent-free period for fit out, but the property was not occupied and entered into the rating list until 27 December 2018. No detail had been provided to demonstrate the extent of fit out required or explain the delay in occupation of around a year. When questioned, Mr Marshall stated he did not believe the rent had been adjusted for fit out when analysed and I noted no costs were presented. As there was no copy of the lease provided in evidence and no FOR supplied to the VO, there was little

information available on the terms of the lease. On balance I found that the rent agreed on the subject property reflected its value in November 2017 but would require adjustment to reflect the fit out and was of little assistance in demonstrating the value at the AVD of 1 April 2015. I must consider the subject property on the material day of 27 December 2018, when it was a newly occupied unit following the redevelopment of 77 Shaftesbury Avenue, but with regard to the values at the AVD. The appellant's representative had started his analysis of the subject property's rent without adjustments, and I therefore found the approach to be flawed.

27. The examples presented by the VO demonstrated that similar retail units had rents agreed close to the AVD at values supporting the tone for the parade, at £2,340/m^2. The rents agreed at renewal on the units at 100-102 and 124 Shaftesbury Avenue were higher in 2015 than agreed on the subject property in November 2017. The new lease on the unit at 90-92 Shaftesbury Avenue in June 2014 was at a similar level to the subject property's 2017 rent. Mr Marshall contended that the VO's examples were in a better locality, closer to local attractions and this was reflected in those rents, but I found they were in the same locality as the subject property and therefore were relevant rental and tonal evidence.

28. I did not consider the subject property to be in a secondary location simply because it was not surrounded by other retail units on the same side of the street. It is located in a redeveloped building with offices above and therefore in a prime location to attract custom from within the building as well as passing trade. Mr Cates submitted that the subject property is not simply a shop but a quasi-restaurant with a small kitchen to provide basic food as well as beverages. I found that this type of occupier would likely be attractive to the landlord but, valuing vacant and to let on the material day, there was no evidence before me that its location was inferior to the units opposite. No evidence was provided to show a difference in footfall, and I found that the units opposite were comparable and provided AVD rental evidence.

29. I accepted that the redevelopment of 77 Shaftesbury Avenue had led to the loss of some retail units on that site but did not find there was persuasive evidence that this would devalue the subject property in comparison to those on the opposite side of the street. The existing entry in the list was already lower than the examples cited as rental evidence by the VO, at £2,160/m^2, compared to £2,340/m^2, apparently acknowledging there may be some difference in value. However, Mr Marshall's proposed Zone A price was half the value of the existing Zone A price and I found there was simply insufficient evidence to support there being that much difference in value. I found that the subject property was valued in line with the tone of values in the locality for similar retail units and the current valuation was reasonable.

Determination

30. In view of the above findings and conclusions, I am satisfied that the entry in the 2017 rating list at £146,000 from 27 December 2018 is reasonable and that entry is confirmed.

Right of further appeal

31. Any party who is aggrieved at the Tribunal's decision, and who appeared or was represented at the hearing, has a statutory right of further appeal to the Upper Tribunal (Lands Chamber) pursuant to Regulation 42 of the Tribunal Procedure Regulations. A party does not require permission to appeal from the Tribunal. Any appeal must be made directly to the Upper Tribunal (Lands Chamber) within **four weeks** of the date this decision and statement of reasons is issued.

32. Further information regarding this statutory right of further appeal, and the parties' other rights, is contained in the guidance booklet "*A guide to tribunal decisions"* available on the Tribunal's website at www.valuationtribunal.gov.uk/guidance-booklets/.

Mr W J Read, Senior Member (Presiding)

9 May 2025

Mrs A Sloan
Clerk to the Tribunal
Date issued to the parties: 9 May 2025