VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal: Local Government Finance Act 1988; Accuracy of the RV in the Rating List; Shop and premises; Level of value; Whether the uplift for the return frontage should be removed; Rental evidence; Comparable assessments; Appeal dismissed.

APPEAL NUMBER: CHG101108537

RE: (& 13 Old Compton St) BST & GRD FLR 99A, Charing Cross Road, London, WC2H 0DP
(the "subject property")

BETWEEN:	Harmony Ltd	Appellant
	and	
	Mr A Ricketts (Valuation Officer)	Respondent

SITTING: *remotely using Microsoft Teams*

ON: Monday 16 September 2024

BEFORE: Mr A Ramsay, Senior Member

CLERK: Mrs S D Morgan

APPEARANCES: Mr J McCarthy – Appellant's representative (Altus Group)
Mr C Cates – Valuation Officer's representative

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DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed. The assessment was confirmed as £104,000 Rateable Value (RV) with effect from 1 April 2017.

Introduction

2. This is a 2017 rating list appeal. The subject property had been entered in the 2017 Rating List as 'shop and premises' at a RV of £104,000 with effect from 1 April 2017.

3. The appellant had made a challenge against the accuracy of the compiled list assessment in the 2017 Rating List, by way of a proposal that he served on the Valuation Officer (VO). After considering the proposal and evidence submitted during the challenge period, the VO decided that the proposal was not well founded. A decision notice to that effect was served on the appellant and his representatives then appealed the VO's decision to the Tribunal on the grounds that the current valuation for the hereditament was still not reasonable, under Regulation 13A of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009.

4. Mr McCarthy appeared on behalf of the appellant as both advocate and expert witness and declared that he was employed on a contingency fee basis. In view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), Mr McCarthy's' declaration of truth included a statement that he understood and accepted that his duty is to the Tribunal in giving his evidence and he will comply with this as well as the requirements of his professional body regardless of whether or not the evidence supports his client's case.

5. I accepted this expert witness evidence on the above basis as the appeal is not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure regulations and is 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).

6. Mr Cates appeared as advocate on behalf of the Valuation Officer.

7. Under Tribunal Business Arrangements, I could hear this appeal alone, as the other member selected to attend this hearing was unable on the morning of the hearing to participate and a replacement member could not be found at short notice.

8. The hearing was held remotely via Microsoft Teams.

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

Background

10. The evidence bundle before me comprised all of the evidence disclosed and exchanged during challenge which included comparable assessments, rental evidence, location plans, photographs of the subject property and their skeleton arguments.

11. The subject property is situated within the ground floor of a 1907 neo-baroque five storey commercial building. The subject property occupies basement area and a ground floor zoned area. It measured 136.90m^2 or 51.14m^2 in terms of zone A (ITZA). The ground floor is modern built and has a return frontage. The property is located within a busy area between Tottenham court Road and Leicester square stations.

12. The issues in dispute are the level of value to be adopted and the removal of the uplift for a return frontage. The current zone A rate is £1,915/m^2. The appellant's representative sought a reduction to £1,600/m^2 zone A in his revised valuation of £79,500 RV with effect from 1 April 2017 based on other reductions to retail units in Charing Cross Road. The valuation officer's representative believed that the current £104,000 RV was fair and reasonable.

Relevant Law

13. Rateable value is to be determined in accordance with paragraph 2(1) of Sch.6 to the Local Government Finance Act 1988, which provides:

"(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.

Discussion

14. The subject hereditament must be valued for the purpose of non-domestic rating on the basis of the rent at which it might reasonably be expected to be let from year to year on a number of assumptions. Those assumptions are listed in paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988.

15. In accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI:2014 No.2841), the date of the hypothetical rent was 1 April 2015, the antecedent valuation date (AVD). This common date was used to ensure that every property was treated in a consistent way.

16. Matters that affected the physical state or enjoyment of the property or the locality were to be taken at the material day, as outlined by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject hereditament, the material day was 1 April 2017.

17. In the case under consideration, I had analysed the competing evidence having regard to the authoritative guidance in Lotus & Delta v Culverwell (VO) and Leicester City Council [1976] RA141. The rent on the subject property is considered to be the correct starting point but, where available, rents on similar properties are also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence can then be weighted.

18. The starting point for consideration was the actual rent passing on the subject property. There was a 2012 rent on the subject property at £105,000 per annum followed by a 5-year rent review from 25 December 2017 at £140,000 per annum. This analysed to £2,585/m^2 (ITZA), supporting the base rate. I noted that although this was two and half year's post AVD, if it was taken back to AVD, it would support the level of value adopted on the subject property. I weighted this evidence accordingly.

19. In support of his case, the appellant's representative referred to properties on the same side of the street and in close proximity to each other on Charing Cross Road. The first was (inc 18 Manette St) Bst-Grd Flrs 121-123, Charing Cross Road, London. This property sits on the parade to the north of the subject property. Following a challenge, the tone of this property was reduced from £2,300/m^2 to £1,600/m^2. Similarly, Unit 1, 77-79, Charing Cross Road, London, sits to the south of the subject property and has also been agreed at a base rate of £1,600/m^2. In addition, Unit 8 Central Cross Bst-Mezz Flrs 67-69, Charing Cross Road, London, sits in the parade directly to the south of the subject property and has been agreed from £2,300/m^2 down to £1,600/m^2. Therefore, the nearest shops to the north and south of the subject have both been agreed at £1,600/m^2. He contended that the subject property should be valued in line with these agreements.

20. In relation to the removal of the 5% uplift for return frontage, the neighbouring Unit 8 Central Cross Bst-Mezz Flrs 67-69, Charing Cross Road, London, has been agreed at challenge stage with no uplift for return frontage. Number 67-69 Charing Cross Road is on a similar corner location to the subject and has a far more prominent frontage. This assessment has no uplift for return frontage. In addition, (inc 18 Manette St) Bst-Grd Flrs 121-123, Charing Cross Road, London, has a prominent return frontage and no uplift has been agreed here. He therefore contended that the uplift should be removed in line with the comparable properties cited. He sought a revised valuation of £79,500 RV with effect from 1 April 2017.

21. The valuation officer's representative referred to rental evidence, in particular the rent on the adjacent café (incl bst of 95 Charing Cross Road) Bst-Grd Flrs, 97-99 Charing Cross Road, London. There was a new letting on this property in January 2015 at £120,000 per annum. This analysed to £2,270/m^2 (ITZA) and supported the base price of £1,915/m^2 currently adopted on the subject property. He added that in relation to properties that deal with adult material, such as the subject property, they must have a license. The rent would therefore show a premium for a property that can be used for this purpose.

22. The argument for the uplift for the return frontage to be removed because it was removed elsewhere was not compelling. The valuation officer's representative contended that a return frontage is useful in a retail environment, and it provides visible prominence of the shop in a retail street. He believed that the 5% uplift should be retained, and it was again supported by the level of rent paid on the subject property.

23. In response to the appellant's representatives' comparable properties, the valuation officer's representative had attached little weight to these as Unit 1, 77-79 Charing Road relates to base prices which have been agreed on a newly built parade of shops within a different site to the subject property. The base price does not relate to older properties, nor the whole of Charing Cross Road. Reference was also made to (inc 18 Manette St) Bst-Grd Flrs 121-123, Charing Cross Road. This was reduced to £1,600/m^2 because of the new parade of shops at 77-79 Charing Cross Road, as it was in the same pitch.

24. Having examined the evidence presented by the parties, I determined that the assessment should not be reduced. I found the strongest evidence was the rent paid on the adjacent café (incl bst of 95 Charing Cross Road) Bst-Grd Flrs, 97-99 Charing Cross Road, London. This property was of a similar size to the subject property over a similar arrangement of floor levels. There had been a new letting on this property in January 2015 at £120,000 per annum which analysed to £2,270/m^2 (ITZA). This was the closest to the AVD and supported the base price of £1,915/m^2 currently adopted on the subject property. Furthermore, the valuation

officer's representative had explained the reasons for the reductions in the level of value for other properties in Charing Cross Road which did not appear to affect the subject property.

25. Turning to the return frontage, there appeared to be no good reason for the uplift to be removed. Return frontages are often unique to a particular property. In the case of the subject property, the photographic evidence showed that it occupied a prominent position on the corner of Charing Cross Road and Old Compton Street. The use of both frontages enhanced the tenant's opportunity to attract more customers. I noted again that this was supported by the rental evidence in this locality.

26. In appeals of this nature the burden of proof rested on the appellant's representative to prove his case for a reduction. However, in the case before it, I concluded that he had failed to produce sufficient evidence to justify his claim for a reduction in the level of value and the removal of the uplift for the return frontage. Consequently, I was satisfied that the grounds for the appeal were not substantiated, and the appeal was dismissed.

Disposal

27. In view of the above findings and conclusions, I am satisfied that the present assessment for the subject hereditament of £104,000 RV with effect from 1 April 2017 is reasonable. Consequently, the appeal is dismissed.

Date issued to parties: 15 October 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.
