VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal: Local Government Finance Act 1988 Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992/556); Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council [1976] RA 141; shop and premises; price per m^2 in dispute; rental evidence; comparable assessments; appeal dismissed.

APPEAL NUMBER: CHG101115813

RE: Unit 12 Lower Mall (69 Shires Walk), Highcross, Leicester, LE1 4FP (the "subject property")

BETWEEN: Warren James (Jewellers) Limited — Appellant

And

Joanne Moore IRRV (Hons) (Valuation Officer) — Respondent

SITTING: *remotely using Microsoft Teams*

ON: 5 August 2024

BEFORE: Mr SP Wood, Presiding Senior Member
Miss R Punia, Member

CLERK: Mrs J Routledge IRRV(Tech)

APPEARANCES: Mr S Bicknell from GL Hearn representing the appellant

Ms S Burn representing the respondent

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is dismissed.

2. The panel confirmed the rateable value (RV) of the subject hereditament to be £69,500 with effect from 1 April 2017.

Introduction

3. This was a 2017 rating list appeal; the subject property had been entered in the 2017 rating list as ‘shop and premises’ at an RV of £75,500 with effect from 1 April 2017 based on a zone A rate of £1,250 per m^2. This was subsequently revised to £69,500 based on a zone A rate of £1,150 per m^2 following a number of settlements in Shires Walk.

4. The challenge proposal was submitted by GL Hearn on behalf of Warren James (Jewellers) Limited and was received by the Valuation Officer on 23 August 2023. It had been made on the grounds that the RV shown in the rating list on 1 April 2017 was not reasonable. A revised RV of £65,250 based on a Zone A rate of £1080 per m^2 was sought with effect from 1 April 2017.

5. Mr Bicknell 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), the representative confirmed that he was instructed under a conditional fee arrangement. He declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and 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.

6. The panel accepted this expert witness evidence on the above basis as the parties agreed the appeal was not complex and to do otherwise would be contrary to regulation 3 (Discharge of Valuation Tribunal for England (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). The panel therefore considered the “expert” evidence and attached such weight to it as it saw fit.

7. As part of their induction training, two new members of the tribunal were observing proceedings. It was explained to the parties that it was the panel’s intention to invite their colleagues to accompany it to the retiring room. The parties were assured that the new members would not participate in the decision-making exercise but would simply observe as part of their training. Neither party raised any issues or objections to this.

8. This decision document is not and does not purport to be a verbatim record of proceedings.

Relevant Law

9. 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.

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.

It is a well-established rating principle that the starting point in the determination of a property's RV should be the rent passing on the subject hereditament itself.

8. 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 No. 556) as amended. In respect of the subject appeal, the material day is 1 April 2015.

9. The panel also had regard to the leading judgment in the Lands Tribunal case of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141 referred to by both parties in their submissions. The six propositions in this judgment were:

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

(ii) The more closely the circumstances under which the rent is agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of gross value in s19(6) of the General Rate Act 1967, the more weight should be attached to it.

(iii) Where rents of similar properties are available, they too are 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.

(iv) Assessments of other comparable properties are also relevant. When a valuation list is prepared these assessments are to be taken as indicating comparative values as estimated by the Valuation Officer. In subsequent proceedings on that list therefore they can be properly referred to as giving some indication of that opinion.

(v) In the light of all the evidence an opinion can then be formed of the value of the subject hereditament, the weight to be attributed to the different 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.

(vi) 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 clearly be more difficult to reject the evidence of the actual rent."

Discussion

10. Arguments and factual evidence from both the appellant's representative and the respondent were provided. This comprised documentation exchanged between the parties

as part of the challenge process, the appellant's representative's challenge submission, the respondent's challenge decision notice and a GOAD map and photographs of the location of the subject hereditament.

11. The subject property was a shop and premises with a total area of $75m^2$ and a zone A area of 60.50 m^2. The unit is located in Shires Walk within the Highcross shopping centre in Leicester. It is located in a central plot of the lower mall adjacent to the escalators that lead to the upper mall.

12. Mr Bicknell sought to rely on the rental evidence of the subject property. He reminded the panel that according to Lotus & Delta, the rent on the subject property was the starting point. Rents agreed closest to the AVD are considered the most accurate reflection of market value at that date (all things being equal) and where those rents are new lettings, they are considered to be towards the top of the hierarchal ladder. The subject property was a new rent on 25th March 2015 a few days before the AVD. He argued that the top three ingredients of Lotus & Delta were satisfied by the letting on the subject property. The subject property lease was for ten years at a rent of £72,500 with a six month rent free period. This was an incentive and not for fit out as Warren James (Jewellers Ltd) took only a few days to fit out their shops to their requirements. The rent analysed to £1,080 per m^2 amortised over the first five year to the rent review. He argued that the other agreements reached in the centre would not have been made if the tenants had been aware of the rent on the subject property.

13. The Valuation Officer considered the RV to be reasonable given the current RV was £69,500 against an annual rent of £75,500. Having amortised the six month rent free period over both the first five years and then the full term which gave a zone A rate of £1,113 per m^2 it was considered that this supported the current adopted rate to be reasonable. The Valuation Officer provided nine comparable units, three had settlements for the same price per m^2 used on the subject property and two further challenges had not disputed the tone of £1,150.

14. The panel noted the rental evidence provided by the Valuation Officer where lettings had been agreed between 9 May 2014 and 11 April 2017. The two new lettings on unit SU 17 and Unit 18 closest to the AVD in May and September 2014 analysed to between £1,478.48 per m^2 and £1,212.82 per m^2 respectively, these were given significant weight as supporting the zone A rate of £1,150. The earlier and later rents were given less weight as they were further from the AVD. The rent on Unit 9 was a renewal and therefore was given less weight.

15. The Valuation Officer had also provided assessment and settlement evidence in support of the decision that the RV was reasonable. The panel noted that there had been five challenges, two did not dispute the tone and the others were settled following a reduction to the current base rate of £1,150 and no appeals were lodged. The panel gave this evidence weight as supporting a tone being established in this part of the shopping centre.

16. The panel were mindful of the judgment in *O'Brien v Harwood (VO) RA/22/2002* at paragraph 41:

"There are three stages leading to the establishment of tone of the list. At first, when a new rating list is put on deposit, entries will carry relatively little weight: they are opinions of value by the valuation officer, as yet unchallenged and untested by negotiation. Over time assessments will be challenged and agreed or determined by a valuation tribunal or this tribunal or accepted by lack of challenge. Finally, a stage is reached where enough assessments have been agreed or determined or are unchallenged to establish a pattern of values, a tone of the list. The list is then said to have settled. Rents will be largely subsumed into assessments. At that stage rating surveyors will have little regard to rents and pay considerable attention to assessments. The position regarding tone of the list at any particular time is a question of fact. Where an assessment is challenged before a Tribunal the correct time for deciding whether a tone of the list has been established is immediately before the hearing."

17. Mr Bicknell had sought to rely solely on the subject property rental which was accepted as the starting point as it was to a fresh tenant new to the scene and close to the AVD. The panel found that some weight could be attached to the subject property rental evidence because of this. However, the assessments and tonal evidence within the basket of evidence presented by the Valuation Officer carried more weight and was more persuasive. The panel had regard to the fact that the 2017 list was now closed and in accordance with *O'Brien v Harwood* the list was settled and less regard should be had to the rental evidence. There were nine other premises in Shires Walk over half where there had been challenges but no appeals following the base price reduction to £1,150. The panel found this good evidence of a settled tone for premises within the area of Shires Walk where the subject property was situated.

18. Having had regard to all of the evidence and submissions the panel found that there was an established pattern of settlements and assessments within Shires Walk where the subject property was located which was not excessive compared to the rental analysis. This satisfied the panel that the RV on the subject property was reasonable.

Disposal

19. In view of the above findings and conclusions, the Tribunal Panel was satisfied that the RV was not excessive and the appeal was dismissed.

Date issued to parties: 6 September 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.
