VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating Appeals; 2017 Rating List; shop and premises; rental evidence; comparable evidence; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; Appeals allowed in part.

APPEAL NUMBERS:	CHG101129930 and CHG101129937
RE:	Home Bargains, New Scotland Road, Nelson, Lancashire, BB9 9SZ (the “appeal property”)
BETWEEN:	T J Morris Ltd — Appellant and Joanne Moore, Valuation Officer — Respondent
SITTING:	*remotely using Microsoft Teams*
ON:	12 November 2024
BEFORE:	Ms TM Blades, Presiding Senior Member Mrs B Dhoofer-Sagoo, Senior Member
CLERK:	Mrs D Davies IRRV(Hons) BA (Hons)
APPEARANCES:	Mr Andy Allan, from The Beattie Partnership (on behalf of the appellant as both advocate and expert witness) Mr Usman Ali (on behalf of the respondent as advocate)

DECISION AND STATEMENT OF REASONS

Decision

1. The appeals were allowed-in-part.

2. The Tribunal panel determined that the appeal property’s assessment should be reduced to

   (a) £203,000 Rateable Value (RV) with effect from 28 November 2018, and
   (b) £212,000 Rateable Value (RV) with effect from 18 January 2022,

   based on a rate of £80/m^2.

Introduction

3. This is a 2017 rating list appeal. The appeal property had been entered in the 2017 list as a shop and premises from 28 November 2018. The RV was increased from £252,000 to £262,500 with effect from 18 January 2022 to adjust for air-conditioning. A separate appeal was made in respect of both assessments but, with the agreement of the parties, the two appeals were consolidated and heard as one as the grounds in each case are identical. The appellant was seeking a reduction in the RV, contending that the rate of £100/m^2 was excessive.

4. The appellant submitted the challenges on 15 September 2023. The valuation officer determined the challenges to be not well-founded and so the appellant appealed to this tribunal. The appeals were registered on 17 June 2024, the grounds being that the current valuation for the hereditament was not reasonable, under Regulation 13A of the Non-Domestic Rating (Alterations of Lists and Appeals) (England) Regulations 2009.

5. In order to assist the panel, the parties had agreed all basic facts before the hearing. The measurements of the component parts were not in dispute: the total gross internal area (GIA) of the unit was 2546m^2.

6. Mr Allan was appearing on behalf of the appellant as advocate and expert witness. Therefore, it was important to ascertain if there was a success related fee involved and if so whether its existence was compatible with his obligations to the tribunal as an expert. This question was raised in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC). Mr Allan confirmed that he was not on a contingency fee basis. He also declared that he understood and fully accepted that his duty was to the Tribunal in giving evidence and that he would comply with this as well as the requirements of the professional body, regardless of whether or not the evidence supported the client's case.

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

Background

8. The issue before the panel was the correct main rate to be adopted in the appeal property's valuation. The assessment has been calculated at a rate of £100/m^2; the appellant's representative was seeking a reduction to £65/m^2, revised from the £40/m^2 quoted at the Challenge stage.

9. The appeal property is a former Tesco supermarket in the town of Nelson. The property had been out of use for several years before it was bought by the appellant and fitted out as a Home Bargains store. It is a steel and brick structure, with all the retail space on one floor. It is in the town centre, opposite Pendle Rise Shopping Centre.

10. The evidence before the panel comprised of the information disclosed and exchanged during the challenge process. The submissions included photographs of the appeal property, a location plan, rating assessments in support of tone, the parties' skeleton arguments, a

schedule of comparable assessment evidence, and a copy of the current and the proposed valuations.

Preliminary issue

11. Four weeks prior to the hearing the appellant's representative had sent a schedule of assessment evidence to the Tribunal, seeking to have it admitted as evidence. The valuation officer's representative was asked to advise of any objections to the admission of this late evidence. Both parties acknowledged that the evidence was available at the Challenge stage but also both understood that it was assessment evidence of Home Bargains stores. The parties did disagree on the relevance of the evidence in terms of the proximity of the listed properties in relation to the appeal property. A Senior Member of the Tribunal considered the matter and decided that the respondent was not prejudiced by the admission of the assessment evidence, and therefore it was allowed.

Relevant Law

12. The term 'rateable value' was defined in Schedule 6 to the Local Government Finance Act 1988 (as amended). The value was required to reflect an annual rent on the property, assuming a new letting with the tenant being responsible for all rates, taxes, repairs and insurance. In respect of all entries in the 2017 rating list, the Rating Lists (Valuation Date) (England) Order 2014 (SI:2014 No.2841) requires the rental levels to be taken as at 1 April 2015, the antecedent valuation date (AVD). This common date was used to ensure that every property was treated in a consistent way.

13. The material day (the date by which physical factors have to be considered) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. For these appeals, the material days are 28 November 2018 and 18 January 2022.

Discussion

14. The panel analysed the competing evidence with reference to the Lands Tribunal judgment in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA141, which was included in the evidence documents. This provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the appeal property is accepted to be the correct starting point, with consideration given to how that rent accords to the terms of the statutory definition of rateable value. As the appellant owned the freehold of the appeal property there was no rent passing. There was no rental evidence provided in respect of other properties and so, in line with *Lotus & Delta*, the panel moved on to consider the assessments applied to other comparable properties.

15. The appellant's representative argued that the best comparator was Wilkinsons, a large retail store located close to the appeal property. It measured 1,775.6m^2 GIA and was assessed at £40/m^2. Mr Allan acknowledged that the appeal property was a more modern and attractive building, which benefitted from an adjacent car park but disputed that the difference was to the value of £60/m^2. He suggested that the appeal property should be valued at £65/m^2 based on this comparator.

16. The second comparable assessment put forward by the appellant was B&Q, valued at £90/m^2. This large store, measuring 3,205m^2, was located out of the town centre, just off junction 12 of the M65. This was stated by Mr Allan to be a better location than the appeal property, situated between Nelson and neighbouring Burnley and therefore having a larger catchment area.

17. Mr Allan provided context about the locality, an area he had worked for some years. He explained that Nelson was a small town, with comparatively high unemployment, low property prices and few shops in the town centre. In comparison, Burnley was larger, with a range of major high street stores in the town. Burnley was more sought after in terms of retailer demand and so commanded higher rental values.

18. The valuation officer had put forward The Home Bargains store on Colne Road, Burnley as a comparable property. This store was a similar age and a little over half the size of the appeal property at 1,337.65m^2, and it was assessed at £100/m^2. Mr Allan agreed that the figure was appropriate for its size and location, but contended that this showed £100/m^2 to be excessive for the appeal property. Another store in Burnley, B&M Bargains was of an older construction but more comparable in size, at 2,716.63/m^2. This property was assessed at £90/m^2.

19. The schedule of comparable Home Bargains assessments detailed 11 stores in the north of England. They varied in GIA from 928m^2 to 2,361m^2, and the assessments varied significantly, from £36/m^2 to £78.50/m^2. The Accrington store was the closest to the appeal property, at around 10 miles away, but it was also the smallest; this was assessed at £75/m^2. The Market Street, Bolton store, approximately 30 miles away, was closer in size, measuring 2073.3m^2 and that was also assessed at £75/m^2. The store on Pellon Lane, Halifax was roughly 20 miles from the appeal property. It was quite similar in size, at 2239.56m^2 GIA, and it was assessed at £78.50/m^2.

20. The respondent's representative had explained during the introductions that he was appearing as advocate only. When questioned about this by the appellant's representative he stated that this was because he had not dealt with the case at the Check and Challenge stages. He had however visited the appeal property in the weeks leading up to the hearing and he answered questions about the location, stating that, in his opinion, the situation of the Home Bargains store in Burnley was quite similar to the location of the Nelson store, as the Burnley location was in the poorer part of town. This assertion was strongly disputed by the appellant's representative.

Disposal

21. The panel found the oral evidence of the appellant's representative to be persuasive: he was very familiar with the area and was able to provide useful context. Considering the evidence submission, the panel noted the disparity between £40/m^2 for the nearby Wilkinsons, and £100/m^2 for the appeal property and was not satisfied that there was justification for the significant difference.

22. The panel was persuaded that Nelson was an inferior location to Burnley. It reviewed the valuation officer's comparable properties, located in Burnley, noting the assessments of £90/m^2 and £100/m^2. It went on to consider the assessments of Home Bargains stores in nearby northern towns. The Halifax store was fairly similar in size and assessed at £78.50/m^2.

23. In view of the above findings and taking a 'stand back and look approach', the panel is satisfied that the current assessment is unreasonable. The panel allowed the appeal in part, determining that the unadjusted rate per square metre should be reduced to £80/m^2. The panel determined that this reduced assessment more accurately reflected the locality as at the material date. The reduced rate of £80/m^2 was applied to both appeals as there was no dispute about the inclusion of the air conditioning which had given rise to the latter assessment.

24. The revised assessments are shown below.

Description	Area m^2	£/m^2	Value £
Ground floor	2,546.00	80.00	203,680
Plus			
Air Conditioning	2,298.80	4.00	9195
Total			**212,875**
Say £212,000 RV with effect from 18 January 2022			

Description	Area m^2	£/m^2	Value £
Ground floor	2,546.00	80.00	203,680
Total			**203,680**
Say £203,000 RV with effect from 28 November 2018			

Order

25. As a consequence of the above decision, within two weeks of the date of this Order, the Valuation Officer is ordered to reduce the 2017 Rating List entry to:

a) £203,000 RV, with effect from 28 November 2018 and
b) £212,000 RV with effect from 18 January 2022,

Refund of fees

26. As the appeal was successful (either in part or full) a refund of the paid fee will now be arranged (Regulation 13E of the NDR Alteration of Lists & Appeals Regs) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

Date issued to parties: 6 December 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.
