VALUATION TRIBUNAL FOR ENGLAND

2023 Rating List Appeal: Local Government Finance Act 1988; shop and premises; zoning; structural wall; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal dismissed.

APPEAL NUMBER:	CHG101169740
RE:	Post Office 44, High Street, Keynsham BS31 1DX (the “subject property”)

BETWEEN:	M T M	Appellant
	and	
	Lucy Formela-Osbourne (Valuation Officer)	Respondent

SITTING:	*remotely using Microsoft Teams*
ON:	3 September 2024
BEFORE:	Mr K Everett, Presiding Senior Member Mrs N Imambaccus, Senior Member
CLERK:	Ms R Muller IRRV (Hons)
APPEARANCES:	Mr G Ravenscroft from RVA Surveyors Ltd, representative for the Appellant Mr P Gill, representative for the Respondent

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal was dismissed

2. The Tribunal panel confirmed the Rateable Value (RV) of Post Office 44, High Street, Keynsham BS31 1DX (hereafter, known as the subject property) at £46,250 with effect from 12 September 2023.

Introduction

3. This was a 2023 Rating List appeal. The subject property had entered the 2023 Rating List as ‘Shop and premises’ at an RV of £46,500 with effect from 12 September 2023.

4. The Check was submitted on 25 September 2023 and completed on 6 December 2023. A Challenge was submitted on 5 January 2024. It had been made on the grounds that part of Zone B and Zone C areas were incorrect. A revised RV of £42,000 was proposed with effect from 12 September 2023.

5. Following the Challenge submission, it had been recognised that part of Zone B was disadvantaged by masking. Therefore, a 5% allowance had been applied to the subject property’s assessment to reflect this. The VO issued a Challenge decision notice on 15 March 2024 which amended the RV of the subject property to £46,250 with effect from 12 September 2023.

6. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appeal to this Tribunal has been made on the grounds that the valuation for the hereditament is not reasonable. The appeal was received by the Tribunal on 21 March 2024.

7. Mr Ravenscroft 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) Mr Bullimore’s declaration of truth included a statement that he was instructed on 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.

8. Mr Gill, the representative for the respondent appeared as both advocate and expert witness.

9. The panel accepted the 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 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.

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

<u>*Background*</u>

11. The subject property comprised a retail unit located in Keynsham town centre. There are public bus services and rail networks nearby with links to the neighbouring cities of Bristol, which is approximately, six miles to the west, and Bath is approximately eight miles to the east. The subject property is operating as a Post Office but valued as a retail unit. The measurements and values of price per m² is not under dispute. The issue is how the area of the subject property has been zoned and the removal of the office area within the assessment.

12. The assessment of the subject property had originally included a Zone A and Zone B area with an office area, which was to the rear of the subject property. Following an inspection by the Valuation Officer on 30 August 2023, the Zone areas were altered. Mr Gill was of the opinion that as the office wall was not load bearing, it should not be included within the assessment. Therefore, the subject property had a Zone A area, a larger Zone B area and now, the inclusion of a Zone C area, with a 5% allowance for masking, which resulted in an RV of £46,250.

13. Mr Ravenscroft considered that the subject property should have a Zone A and Zone B area with the office area reinstated, which would result in a revised RV of £42,000.

Relevant Law

14. The issue before the panel was to determine the correct valuation for the subject property with effect from 12 September 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.

15. The VO stated that this was a Compiled List error, therefore, the effective date was a later date due to this error. However, 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 was 1 April 2023.

16. The panel referred to references made concerning: The Royal Institution of Chartered Surveyors (RICS) Code of Measuring Practice:

    Zone – The zoned area will include any space created using non-structural walls or partitions. This effectively means that non-structural partitions are ignored when using the zoning method.

    Partitions – where these, are non-structural they should normally be ignored for zoning purposes although part of the rateable hereditament. In the majority of cases, for both analysis and valuation it will be appropriate to zone through non-structural walls.

17. Reference was made to the case of *Lotus and Delta v Culverwell (VO) & Leicester City Council* [1976] RA 141.

Discussion

18. The panel held that when valuing the subject property's assessment using the zoning method, it should be measured to Net Internal Area (NIA). Furthermore, when valuing to NIA, the zoned depth of the shop stopped at the first structural wall. In the case of the subject property, within Zone B area, there was a structural wall in place. However, the issue in dispute was whether the structural wall was of a permanent nature or could be easily removed and therefore, the office area behind the structural wall should be included within the assessment of the subject property as an office area and not part of Zone B or the inclusion of a Zone C area.

19. Mr Ravenscroft referred the panel to the structure of the office and structural parts of the wall. He stated that there was a supporting joist above the glass panes. The removal of the glass

panes would not be load bearing, but the rest of the structure was. He stated that it would require substantial works to remove the rest of the wall structure.

20. However, Mr Gill was of the opinion that there was a clear opening and that the glass panes and timbers below the supporting joist did not constitute any form of a structural element. Removing the non-load bearing glass and timber would not impact upon the structure of the property. Therefore, this section could not be deemed to impact upon the structural integrity of the building.

21. Mr Ravenscroft also referred the panel to the lease agreement which had commenced on 23 April 2020 for a period of three years. The Landlord was responsible for insurance, so to reflect the Full Repair and Insuring, 3.5% had been removed to create an analysed rent of £43,425, which was in line with the proposed RV of £42,000. However, during the hearing, Mr Ravenscroft informed the panel that he had reduced his proposed RV to £41,750, if the office area was to be reinstated within the assessment of the subject property.

22. Mr Ravenscroft stated that as the office would remain in situ if vacant and to let, would attract a tenant who could make use of the office space. Mr Ravenscroft implied that the hypothetical tenant would effectively operate using the office space already situated within the subject property's premises.

23. Mr Gill stated that as the partition was considered to be non-structural, if vacant and to let, the subject property would be considered to be a retail unit, and the hypothetical tenant could remove the glass panes and timber, opening up the area as retail space. Therefore, the current assessment was considered to be correctly assessed as just Zone space.

24. However, Mr Gill did inform the panel that due to the partitions that were in place at the subject property, and a masking area within Zone B, a 5% allowance had been granted, which had been agreed with the appellant's representative. This had reduced the RV to £46,250 with effect from 12 September 2023.

25. The panel considered the details provided by each of the parties. It held that even though there was a supporting joist which held the partition in place, it was not permanent in nature. When looking at the photographs, the wall was timber and the glass panes, which covered most of the office area. Therefore, the panel held that the VO had been correct in removing it from the assessment of the subject property.

Disposal

26. In view of the above findings and conclusions, the Tribunal panel was satisfied that the subject property had been correctly Zoned. Therefore, the appeal was dismissed.

Date issued to parties: 20 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.
