VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; shop and premises; zone A rate in dispute; tone of the area; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; Ladies Hosiery and Underwear Ltd v West Middlesex Assessment Committee (1923) 2KB 679 CA; appeal allowed in part.

APPEAL NUMBER:	CHG101172073	
RE:	250B North End Road, London SW6 1NJ (the "subject property")	
BETWEEN:	K A S	Appellant
	and	
	Mr A Ricketts (Valuation Officer)	Respondent
SITTING:	*remotely using Microsoft Teams*	
ON:	8 October 2024	
BEFORE:	Mrs L Bryning, Presiding Senior Member Mr P Patel, Senior Member	
CLERK:	Miss F Willson IRRV(Dip) BA(Hons)	
APPEARANCES:	Mr C Lambert of Whitestone Commercial acting as advocate and expert witne of the appellant) Ms M Maine acting as advocate and expert witness (on behalf of the respond	

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed-in-part.

2. The Tribunal Panel confirmed the rateable value (RV) of units 1-7 with effect from 1 July 2020 as follows:

Unit 1, 250B, North End Road, London	£4,800	Shop and premises

Unit 2, 250B, North End Road, London	£6,400	Shop and premises
Unit 3, 250B, North End Road, London	£7,400	Shop and premises
Unit 4, 250B, North End Road, London	£5,200	Shop and premises
Unit 5, 250B, North End Road, London	£8,100	Shop and premises
Unit 6, 250B, North End Road, London	£3,000	Shop and premises
Unit 7, 250B North End Road, London	£17,750	Café and premises

Introduction

3. This is a 2017 rating list appeal. The subject property was entered in the 2017 rating list as 'shop and premises' at an RV of £12,750 with effect from 1 April 2017. The check proposal was submitted on 17 January 2023. The check sought a revised assessment splitting the subject property into seven separate assessments which the VO determined was well founded and subsequently split the subject property into the following with effect from 1 July 2020:

Unit 1	RV £10,250	Kiosk and premises
Unit 2	RV £13,500	Kiosk and premises
Unit 3	RV £17,250	Kiosk and premises
Unit 4	RV £12,250	Kiosk and premises
Unit 5	RV £19,000	Kiosk and premises
Unit 6	RV £7,200	Kiosk and premises
Unit 7	RV £42,000	Kiosk and premises

4. The appellant's representative submitted a challenge dated 9 January 2024 seeking revised RV's for the seven units based on a zone A rate of £485/m^2 on units 1 and 2 and a zone B rate of £242.50/m^2 on the units 3 to 7 as they had no shop frontage onto North End Road. The Valuation Officer (VO) determined that the challenges should have been made on the seven new properties and not on the subject property which he deemed to be a historic entry and issued a challenge case decision notice to this effect on 20 March 2024.

5. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, the appellant maintained that the RV's for the units of £10,250. £13,500, £17,250, £12,250, £19,000, £7,200 and £42,000 were unreasonable and appealed the decision which was received by the Tribunal on 10 May 2024.

6. Mr Lambert appeared on behalf of the appellant as both 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 Lambert confirmed that he was not instructed under a contingency fee and he declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and that he would comply with this as well as the requirements of his professional body, regardless of whether or not the evidence supported his client's case.

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

Background

8. The issue between the parties is whether the retail units should be valued as ‘kiosk and premises’ on a base rate of £1075/m^2 or six ‘shop and premises’ and one ‘café and premises’. valued using a zone A rate of £485/m^2 for units 1 and 2 and a zone B rate £242.50 applied to units 3 to 7 as the appellant’s representative submitted.

Preliminary issue

9. The VO had determined that in the challenge decision any appeal against the RV’s on the new units should be made against the new units themselves as the challenge had been made against what was now a historic entry being the original subject property. Ms Maine conceded that the VO that acted incorrectly in seeking to make the challenge invalid by issuing the challenge decision stating that the challenge had been made incorrectly as it was linked to the historic entry. As a result of this the VO agreed that the appellant’s appeals should go ahead and that the VO would not be able under the regulations to include any evidence in connection with this appeal as the challenge stage had ended. Ms Maine conceded that in sending the challenge decision they had granted appeal rights to the appellant. She therefore confirmed that she was not seeking to enter any evidence but would limit herself to questioning the evidence presented by Mr Lambert. The panel determined that it was in the interests of justice to proceed and hear the case.

10. Mr Lambert had forwarded two tables which he explained were larger versions of the two tables contained in his evidence bundle. The tables had been too small to read and so he had blown them up so they could be read. At the close of the case Mr Lambert drew the tribunal’s attention to the fact that on one of the tables he had included the wrong current RV’s for the subject property units as he had put the 2023 list RV’s and not the 2017 list RV’s. This was noted and the panel confirmed that they would disregard the incorrect figures.

Relevant Law

11. The panel is governed by Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999, which provides that:

> 2(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.

12. In respect of an appeal against an entry in the 2017 rating list, the rental levels are to be taken as those passing at the antecedent valuation date (AVD) of 1 April 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841).

13. 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 July 2020 when the subject property was split.

14. Where rental evidence is available, the weight to be attached should be considered in light of the following six propositions set down in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141.

(1) Where the hereditament which is the subject of consideration is actually let, that rent should be taken as the starting basis.

(2) The more closely the circumstances under which the rent agreed both as to time, subject matter and conditions relate to the statutory requirements contained in the definition of gross value in section 19(6) of the General Rate Act 1967 the more weight should be attached to it. (These statutory requirements now contained in Schedule 6, Para 2 (1) Local Government Finance Act 1988 (as amended by the Rating (Valuation) Act 1999)).

(3) Where rents of similar properties are available, they too are to be 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.

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

(5) In light of all the evidence an opinion can then be formed of the value of the appeal hereditament, the weight to be attached to the differing types of evidence depending on the one hand the nature of the actual rent and on the other hand, on the degree of comparability found in other properties.

(6) In those cases where there are no rents available of comparable properties a review of other assessments may be helpful but, in each circumstance, it would be difficult to reject the evidence of the actual rent.

Discussion

15. Mr Lambert submitted that the units were occupied separately and referred the panel to the copies of the leases within the evidence bundle. The rental on units 1 and 2 were significantly higher than those of units 3 to 7 which were at the rear of units 1 and 2 and had no shop frontage onto North End Road. He had not however analysed the rent to arrive at a £/m^2. The rental information for the units was:

		Rent/month	Size/m²
Unit 1	street frontage	£1.500	10.05
Unit 2	street frontage	£1,650	13.33
Unit 3	no street frontage	£800	17.07
Unit 4	no street frontage	£550	12
Unit 5	no street frontage	vacant	18.65
Unit 6	no street frontage	£300	7.1
Unit 7	no street frontage	£1,500	41.08

16. He then drew the panel's attention to the twenty comparable properties he had provided which were shops or café in the vicinity of the subject property and were all between 8.81m^2 and 34m^2. They had a "price a m^2" of between £325/m^2 and £725/m^2 which he submitted supported a tone of £485/m^2 for units 1 and 2 and £242.50/m^2 for units 3 to 7. He had determined the lower rate for the units 3 to7 on the basis that they were directly behind units 1 and 2 and so using zoning they would, in his opinion, be the equivalent to zone B had they been the same property which was always 50% less than zone A.

17. Mr Lambert confirmed that he had not analysed the rent of each unit to take into account the sizes of them but felt that the rents were clearly different in connection with units 1 and 2 compared to units 3 to 7. He also submitted that the start date of the leases being from 1 July 2020 onwards were too remote from the AVD to be of any assistance in assessing the RV for the units. On the basis of an overall price which was applied to the units he had calculated the RV's for the units using a zone A rate of £485/m^2 and a zone B rate of £242.40/m^2 as follows:

		Area m²	ITMS	Proposed RV
Unit 1	street frontage	10.05	1	£4,800
Unit 2	street frontage	13.33	1	£6,450
Unit 3	no street frontage	17.07	0.5	£4,100
Unit 4	no street frontage	12	0.5	£2,900
Unit 5	no street frontage	18.65	0.5	£4,500
Unit 6	no street frontage	7.1	0.5	£1,700
Unit 7	no street frontage	41.08	0.5	£9,900

18. Mr Lambert explained that in order to be classified as a kiosk a property should be a small booth which served the public on the street. The subject units however were shops as they were open for people to walk inside either to have a haircut, consume food and drink or browse around. He referred the panel to 377-379 North End Road which had one unit which was only 8.81m^2 being smaller than the subject units apart from one. This he submitted demonstrated that the definition of a kiosk could not be the size as the smaller comparable unit was not described and valued as a kiosk. The subject units should therefore be categorised as a shop or café and not a kiosk. He also stated that the zone A price of the original single unit which had been the parent property to these units had a zone A price of £485/m^2 and he did not therefore consider that the units should have a higher zone A price than the single entry had.

19. Ms Maine submitted that the definition of a kiosk is a business property of up to 18m^2 and the subject units were similar to the stalls inside a shopping mall which were valued as kiosks. She therefore did not agree that the subject units should be valued as shops and a cafe. She submitted that the subject units were in her opinion kiosks and as such were valued correctly with a base rate of £1075/m^2 and not zoned. In regard to the differences in the rent paid on the subject units Ms Maine submitted that the rents could have been affected by Coronavirus as they commenced from 1 July 2020 onwards when retail properties were forced to lockdown by the government and this could have impacted on any rents agreed which would not have been relevant at the AVD.

20. She also drew the panel's attention to the fact that Mr Lambert had not provided any evidence of footfall and whether units 3 to 7 did indeed have a disadvantage to units 1 and 2 who faced directly onto North End Road. She therefore argued that the units 3 to 7 should not have a discounted rate as there was no evidence that they had suffered as a result of the position they were in. She submitted that it was for the appellants representative to prove his case and not for the VO to prove its case. She stated that Mr Lambert had not, in her opinion, proven that the subject units were not kiosks nor the need for a discount due to the positioning of the subject units 3 to 7.

21. Ms Maine submitted that in connection with the child properties having the same zone A rate as the parent was not necessarily the case. She argued that quite often when a property is split the total RV of the child properties is greater than that of the parent property. Taking into account quantum the larger the assessment the lower the rate per metre squared as in the case of supermarkets. The fact that the subject units were smaller could in fact lead to an increase in the zone A price were the subject properties to be found to be small shops and a café and not kiosks.

22. The panel found:

(1) That as submitted by Mr Lambert the subject units were in fact small retail units and not kiosks as they were properties where customers entered them to be served or to browse. The size of the subject units was similar in size and in the vicinity of the comparable properties put into evidence by Mr Lambert which were valued as shops or cafes and not kiosks. The panel then turned to the question of the correct zone A rate that was applicable.

(2) The comparable properties entered into evidence which were valued on a main space rate. The VO had offered no evidence of any comparable properties to support the subject units being valued as kiosks on an overall rate of £1075/m^2. The panel therefore determined that as Mr Lamberts comparable properties had been assessed on a main space and were of a similar size it would be appropriate to value the subject units on a main space rate and not zone them.

(3) The panel found there was a lack of detail and analysis of the subject properties by Mr Lambert or Ms Maine which made it difficult to determine the correct zoning for the subject properties. The panel noted that the café was in fact 41.08m^2 and so if zoning were to be applied it would be likely to include more than one zone but yet Mr Lambert proposed to calculate the rate for the café as all within zone B. The panel therefore again determined that it was appropriate to use a main space rate to assess the subject units. Further Mr Lambert had calculated the proposed RV's using the ITMS to calculate the RV's.

(4) In connection with the size of the comparable properties put into evidence by Mr Lambert they were between 8.81m^2 and 34m^2 and had a price/m^2 of between £325/m^2 and £725/m^2 The panel found that on the basis of these comparable properties they supported a main space rate for the subject units of £485/m^2 as being reasonable.

(5) In connection with units 3 to7 the panel found that although they did have some shop frontage they were disadvantaged as the shop front was not directly onto North End Road and the units 3 to 7 were only visible once a customer entered the walkway inside the mini market. This was likely to restrict the footfall for the units and needed to be reflected with a reduction to the main space rate. The panel however considered a discount of 50% was too high and that it had not been provided with evidence supporting that level of reduction. The panel therefore found that a 10% discount to a rate of £436.50/m^2 was appropriate in this case. The RV's were calculated in accordance with the VO 's rounding rules.

Disposal

23. Having considered both parties' comments on the comparable properties provided, the panel concluded that the base rate of £1075/m^2 was not fair and reasonable and the proposed main space rate of £485/m^2 applied to units 1 and 2 was fair and reasonable taking into account the basket of evidence. In connection with units 3 to 7 the panel found that the rate of £436.50/m^2 being a discount of 10% from that of units 1 and 2 was reasonable. In view of the above findings and conclusions, the Tribunal Panel allowed the appeal in part.

24. The panel confirmed the following RV's for the subject units as follows:

	Area m^2	**Main space Rate**	**Value**	**RV**
Unit 1	10.05	£485	£4,874.25	£4,850
Unit 2	13.33	£485	£6,465.05	£6,400
Unit 3	17.07	£436.50	£7,451.05	£7,400
Unit 4	12	£436.50	£5,238.00	£5,200
Unit 5	18.65	£436.50	£8,140.73	£8,100
Unit 6	7.1	£436.50	£3,099.15	£3,050
Unit 7	41.08	£436.50	£17,931.42	£17,750

Order

25. As a consequence of the above decision, the Valuation Officer is ordered to amend the 2017 Rating List entry for units 1 to 7 with an effective date of 1 July 2020 to be as follows:

Unit 1, 250B, North End Road, London	£4,850	Shop and premises
Unit 2, 250B, North End Road, London	£6,400	Shop and premises
Unit 3, 250B, North End Road, London	£7,400	Shop and premises
Unit 4, 250B, North End Road, London	£5,200	Shop and premises
Unit 5, 250B, North End Road, London	£8,100	Shop and premises
Unit 6, 250B, North End Road, London	£3,050	Shop and premises
Unit 7, 250B North End Road, London	£17,750	Café and premises

26. The amendment to be complied from within two weeks of the date of this Order.

Refund of fees

27. 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.

Date issued to parties: 5 November 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.
