VALUATION TRIBUNAL FOR ENGLAND

2017 Rating List Appeal: Local Government Finance Act 1988; retail premises; accuracy of compiled list entry; rental evidence; comparable evidence; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal allowed-in-part.

APPEAL NUMBER: CHG101196144

RE: Maxwells (Sunderland) Ltd, 31 Galgate, Barnard Castle, DL12 8EJ (the "appeal property")

BETWEEN:	Maxwells (Sunderland) Ltd	Appellant
	and	
	Amanda Hitchings (Valuation Officer)	Respondent

SITTING: *remotely using Microsoft Teams*

ON: 13 June 2024, Remote Hearing 2

BEFORE: Ms S Penni, Presiding Senior Member
Mr A Hussain, Senior Member

CLERK: Mrs D Davies IRRV(Hons) BA (Hons)

APPEARANCES: Mr Jeffrey Bell, on behalf of the appellant as both advocate and expert witness
Mr Christopher Stone, on behalf of the respondent as both advocate and expert witness

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed-in-part.

2. The Tribunal panel determined that the appeal property's assessment should be reduced to £20,000 Rateable Value (RV) with effect from 1 April 2017.

Introduction

3. This is a 2017 rating list appeal. The appeal property had been entered in the 2017 list as a shop and premises, RV £20,750. The appellant is seeking a reduction in the RV to £19,750 and pursued an appeal to this tribunal. The appeal was registered on 15 January 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.

4. 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, and nor were relativities or the end allowance applied.

5. Mr Bell was appearing 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 Bell confirmed that his company was employed on a fixed 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.

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

Background

7. The appeal property is a double-fronted stone built terraced shop in the market town of Barnard Castle. The accommodation is on two floors, with the first floor being storage and the ground floor containing retail space. The property has a total area of 568m^2, 144m^2 in terms of zone A (ITZA).

8. The assessment has been calculated at a zone A rate of £180/m^2; the appellant's representative was seeking a reduction to £173/m^2.

9. 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 rental evidence, and a copy of the current and the proposed valuations.

Relevant Law

10. 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 requires the rental levels to be taken as at 1 April 2015, the antecedent valuation date (AVD).

11. 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 this compiled list appeal, the material day is 1 April 2017.

Discussion

12. The panel analysed the competing evidence with reference to the authoritative guidance in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA141, which was included in the evidence documents. The Lands Tribunal judgment provided guidance on the weight to be attached to rental and assessment evidence. This case had established six propositions that gave clear guidance to be followed when assessing rateable value. Bearing these six propositions in mind, the panel acknowledged that the rent on the appeal property was considered the correct starting point, and in particular how that rent compared to the statutory definition of rateable value. However, in this appeal, there was no such rent.

13. The panel then went on to examine the third and fourth propositions outlined in *Lotus and Delta* and had regard to the rents and assessments placed on comparable properties. The appellant's representative had provided evidence of rents in respect of shops from the same street; these rents had been set between 1 April 2014 and 1 April 2015. Reviewing this rental evidence, the panel noted that the analysed rents ranged from £136.71 to £271.76/m^2. The highest analysed rent was for 44 Galgate and was the one set on 1 April 2015, the AVD. In January 2015 the rent for 20A Galgate was set at £7,500 per annum, analysing to £136.71/m^2. The rent for 27 Galgate was agreed in April 2014 at £12,500 per annum, analysing to £181.22/m^2. In each case the zone A rate adopted was £180/m^2, which was the rate currently applied to the appeal property.

14. The panel noted that the appellant's representative did not dispute the rate of £180/m^2 in respect of 27 Galgate. However, he contended that the differential between that property's assessment and that of the appeal property should be maintained at the same rate as it had been in previous rating lists. In the 2017 list the two properties had been valued at the same rate in terms of zone A but in previous lists the zone A rate applied to the appeal property was £5/m^2 less than the rate for 27 Galgate. The appellant's representative stated that the reason he was seeking a difference of £7/m^2 for the 2017 list was to maintain the proportional difference in the assessments between the two properties.

15. Mr Bell provided his justification for a difference in the zone A rate on the appeal property and its near neighbour, 27 Galgate. The appeal property is situated further from the town centre than the comparable property, which has a prominent position at the end of a block and benefits from passing traffic (motor and pedestrian) moving to and from the town's central car park and supermarket. The appellant's representative stated that, upon leaving the car park, most people would turn left towards the main shopping area and would therefore not pass the appeal property. Number 27 also benefitted from being closer to the pedestrian crossing. He emphasised his local knowledge, and the additional evidence he had gathered by means of observation and pedestrian counts.

16. The valuation officer's representative confirmed that he considered the rental evidence in respect of 27 Galgate, which analysed to £181/m^2, to be good evidence with reference to the appeal property. He also stated that he placed weight on the rent for 32 Galgate which he analysed to £149.46/m^2. He argued that, along with all the rents referred to in paragraph 13 above, there was a basket of evidence which illustrated that the appeal property could have

let for an amount in excess of £180/m^2 at the AVD. The appellant's representative challenged this view, questioning how the array of rents from £136.71/m^2 to £271.76/m^2 resulted in an assessment of £180/m^2 for the appeal property. Mr Stone responded that some rents were afforded more weight than others. He confirmed that 27 Galgate was his preferred comparator. The panel noted that this rent had been set a year prior to the AVD, unlike others quoted.

17. Mr Stone expressed his opinion that he did not think it necessary to maintain the differential between the appeal property and number 27. In his view there was no difference in the location of the two properties, one being next door but one to the other. He confirmed in response to a question that he had only visited Barnard Castle on a couple of occasions. Mr Bell explained that Galgate is a very wide street and that the 'even' side is different in character to the 'odd' side. His evidence included a reference to the fact that, on the 'odd' side of the street, assessments in previous rating lists had shown variations in the zone A rate, with 1-13 assessed more highly than 15-21, then reducing again at number 27. The panel noted that this evidence, whilst not fleshed out by the appellant's representative, was not disputed by the respondent.

18. Both parties referred the panel to the judgement in *Lamb v Minards (VO)* [1973] 153. Mr Bell argued that there was a presumption that the differentials in the zone A rates applied between previous rating lists were correct unless the valuation officer was able to refer to rental evidence to show why the differentials should not be carried forward. The panel acknowledged this, but also accepted Mr Stone's contention that differentials should only be maintained where there was an absence of fresh evidence.

19. Both parties had described the rental evidence for number 27 as good evidence. The panel agreed as it was a shop and premises in very close proximity to the appeal property. However, the panel noted that that the rent had been set a year before the AVD, and that it was one amongst a range of other rents. The panel acknowledged that the analysed rent on 27 Galgate illustrated that the zone A rate of £180/m^2 was not excessive for that property. However, the panel then went on to determine whether or not a differential in the zone A rate was warranted for the appeal property as had been applied in the previous rating lists. The panel considered the detailed explanation of the locality provided by Mr Bell and studied the location plans. Taking a 'stand back and look' approach the panel determined that the appeal property was in a less prominent position than number 27, it would have less passing footfall, and it was located further away from the pedestrian crossing. The panel was of the opinion that the hypothetical tenant would expect that difference to be reflected in a lower rent, albeit the difference might be minimal.

Disposal

20. In view of the above findings and conclusions, the Tribunal panel is satisfied that the current assessment is unreasonable; however, it was not convinced that the zone A rate should be reduced to £173/m^2 as requested by the appellant's representative. The panel allowed the appeal in part, determining that the zone A rate should be £175/m^2, resulting in £20,000 RV. The panel concluded that this slightly reduced rate more fairly reflected the appeal property's poorer position along Galgate. The revised assessment is shown below.

Description	Area m^2	£/m^2	Value £
Ground - Retail Zone A	44.45	175.00	7,779
Ground - Retail Zone B	11.75	87.50	1,028
Ground - Showroom	63.20	21.88	1,383
Ground - Retail Area	19.86	21.88	435
Ground - Internal Storage	7.30	17.50	128
Ground - Sales	18.70	17.50	327
Ground - DIY	150.80	43.75	6,598
Ground - Garden Showroom	158.10	43.75	6,917
Ground - External Storage	29.70	4.38	130
First - Office and Stores	64.41	8.75	564
Sub- total			**25,289**
Less 20% for fragmentation / shape			5,057
Total			**£20,232**
Say £20,000 RV with effect from 1 April 2017			

21. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry to £20,000 RV, with effect from 1 April 2017, within two weeks of the date of this Order.

Refund of fees

22. 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: 9 July 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.