VALUATION TRIBUNAL FOR ENGLAND

2023 Rating List Appeal; retail warehouse and premises; rental evidence; Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council 1976; appeal allowed in part.

APPEAL NUMBER: CHG101224858

RE: Topps Tiles, Pasteur Road, Great Yarmouth, Norfolk NR31 0DW (the "subject property")

BETWEEN: Topps Tiles PLC — Appellant

and

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

SITTING: *remotely using Microsoft Teams*

ON: 17/12/2024

BEFORE: Miss AC Griffiths, Presiding Senior Member
Mr WJ Read, Senior Member

CLERK: Mrs C McAvoy IRRV(Dip)

APPEARANCES: Simon Penny of Altus Group, for the appellant
Nnennaya Awoyokun, for the respondent

DECISION AND STATEMENT OF REASONS

Decision

1. The appeal is allowed-in-part. The Tribunal Panel found that the valuation for the subject property was not reasonable and the rateable value (RV) was reduced to £77,500 based on a rate of £125/m^2.

Introduction

2. This appeal has been brought in respect of the following: Topps Tiles, Pasteur Road, Great Yarmouth, Norfolk NR31 0DW which was entered in the 2023 Rating List as 'Retail warehouse and premises' at £85,500 RV effective from 1 April 2023.

3. A challenge was submitted on 30 May 2024 which disputed the tone applied in the determination of the RV. The current rate applied is £137.50 per m^2 and the appellant's representative proposed a reduction to £115 per m^2 resulting in a reduced RV of £71,500.

4. Both Nnennaya Awoyokun and Simon Penny appeared in a dual role of 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 Penny declared that he was instructed under a conditional fee. He declared that he accepted and understood that his overriding duty was to the Tribunal.

5. The panel accepted the expert witness evidence on this basis as the appeal was not considered to be 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 Tribunals' rules concerning 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.

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

Issue and Relevant Law

7. The issue between the parties concerned the RV of the subject property, specifically, the base rate per m^2 that should apply.

8. The term 'rateable value' as defined in paragraph 2(1), Schedule 6 to the Local Government Finance Act 1988 (as amended):

   "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."

9. The antecedent valuation date (AVD) for 2023 list rating appeals is 1 April 2021. The material day was 1 April 2023, this being the date the subject property entered the valuation list.

10. The panel had regard to the Lands Tribunal judgment of *Lotus & Delta v Culverwell and Leicester City Council (*LVC/376/1975). This case had established six propositions, which gave clear guidance to be followed when assessing rateable value, namely:

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

(2) 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 s.19(6) of the General Rate Act 1967 the more weight should be attached to it.

(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 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 attributed to the differing 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.

(6) 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 be clearly more difficult to reject the evidence of the actual rent.’

Discussion

11. In deciding this appeal, bearing the six propositions in mind, the panel acknowledged that the starting point was the actual rent passing on the subject property. The subject property was located on Pasteur Road and was constructed in 1989 and refurbished in 2000. It was constructed as one large retail space but had been split into two with the adjoining unit occupied by a gym company. The subject property measured 622.10m^2. It was submitted that the subject property was occupied on a leasehold basis and the most recent review was on 6 November 2020. This was agreed at a rent of £78,500 per annum which had been analysed to £126/m^2.

12. The respondent had placed little weight on the subject rent on the basis that it was not an open market rent. There was no evidence to support this assertion other than the opinion of the respondent who submitted that the rent had not changed in twenty years despite having upward only reviews. The panel found that there could be many reasons for the lack of change. The panel placed some weight on the subject rent. It was agreed just six months prior to the AVD and therefore provided good evidence of the rental market at this time and indicated that the current rate per m^2 applied was unreasonable. However, the panel was mindful that this was a rent review as opposed to a new lease and therefore found it necessary to examine the basket of evidence.

13. The respondent referred to rental evidence for three units rated as retail warehouse and premises situated on Purley Court. They were rents agreed between 14 June 2020 and 1 November 2021 and analysed to figures ranging from £172.18 to £231.40. They had an unadjusted rate applied of £175/m^2. It was acknowledged that they were situated in a superior location with direct access to the A47 but it was submitted that it was the only rental evidence available and demonstrated that if properties just four minutes away could achieve rent of £170 and above, the rate applied to the subject property was reasonable.

14. The panel heard from the appellant that Purley Court was situated on Gapton Hall retail park, which was a premium retail spot with established retailers such as Marks & Spencer and McDonald's and benefited from over 500 car park spaces. In contrast, the subject property was a standalone retail site.

15. The panel applied little weight to the rental evidence supplied in respect of Purley Court. It found that, although located nearby, they were insufficiently similar to the subject property. They were clearly in a more advantageous location and not comparable to a standalone unit.

16. The panel therefore considered the tonal evidence presented. Both parties had referred to assessment evidence which they deemed comparable. Six units were presented and the unadjusted rates ranged from £82.50 to £137.50.

17. The appellant submitted that considering the subject rent in conjunction with the rate applied to Matalan, Southdown Road (£82.50/m^2) and Bennetts (Farm Foods), Southdown Road (£95/m^2) supported that the rate applied to the subject property was unreasonable. The adjoining gym was also referred to, this was valued at £61.25/m^2, although this was re classified as a gym, it was submitted that vacant to let it is a large retail warehouse.

18. The respondent relied on Tapi Unit 2 and Unit 4 which were both situated on Pasteur retail park and had an unadjusted rate of £137.50/m^2. They were constructed in 2004 and it was submitted that Matalan and Bennetts were much older and larger.

19. In making its findings, the panel placed less weight to unit 2 and 4, Pasteur retail park as they were situated further away and on a retail park so less comparable. Little weight was attached to the adjoining gym as this was rated as a different mode or category of occupation and therefore was not comparable.

20. The panel found Bennetts and Matalan to be better comparable properties in terms of the type of retail unit and location. Matalan was much larger at 2700m^2 so more weight was placed on Bennetts. This measured 911.6m^2 and was located in close proximity to the subject property. The rate applied of £95/m^2 supported that the subject property was excessively valued in comparison, however, it was older as it was constructed in 1987 and had not been refurbished.

21. In conclusion, the panel placed more weight to the subject rent and the Bennetts assessment. It had to consider that the subject property was slightly smaller and refurbished so it was not persuaded that the proposed £115 was supported. Having regard to the subject rent together with the tonal evidence, the panel found a rate of £125/m^2 to be reasonable.

22. Applying the rate of £125/m^2 provides a RV of £77,500 as set out below:

Floor	Description	Area m²/unit	£ per m²/unit	Value
Ground	Retail Showroom	622.10	125.00	77,762.50
			Valuation sub-total	77,762.50
			RV (rounded down)	**77,500**

Disposal

23. In view of the above findings and conclusions, the Tribunal Panel is satisfied that the rateable value is unreasonable and the appeal is allowed in part.

Order

24. Under the provisions of regulations 38(4) and 38(10) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to reduce the entry in the rating list to show the following:
    Topps Tiles, Pasteur Road, Great Yarmouth, Norfolk NR31 0DW
    £77,500 RV effective from 1 April 2023

25. Under regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

26. 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: 10 January 2025

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.
