

UPPER TRIBUNAL (LANDS CHAMBER)



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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

RATING – VALUATION – retail shop – no tone of the list – rent of appeal property – comparable rental evidence – rateable value determined at £104,600

IN A MATTER OF AN APPEAL AGAINST A DECISION
OF THE VALUATION TRIBUNAL FOR ENGLAND

BETWEEN:

FLIGHT CENTRE (UK) LIMITED

Appellant

-and-

MR A RICKETTS

(VALUATION OFFICER)

Respondent

Re: 42 Upper Street,
London,
N1 0PN

Mark Higgin FRICS FIRR V

19 October 2021

Royal Courts of Justice

Mr Stewart Carter for the appellant
Mr David Alford for the respondent

The following cases are referred to in this decision:

Lotus and Delta Ltd v Culverwell (VO) [1976] RA 141

Special Eyes PLC v Felgate (VO) (1992) RA 387

Lamb (VO) v Go Outdoors Ltd (2015) UKUT 0366 (LC)

Introduction

1. This is an appeal by Flight Centre (UK) Ltd, the occupier and ratepayer of 42 Upper Street, London N1 0PN against the decision of the Valuation Tribunal for England dated 10 December 2020 dismissing the appellant's appeal and confirming the entry in the 2017 Rating List at the compiled list figure of £127,000.
2. The appeal was heard under the Tribunal's simplified procedure. I inspected the property and the comparable properties on the morning of 18 October 2021.
3. The appellant was represented by Mr Stewart Carter who called Mr Joe McCarthy BA(Hons) to give expert evidence. The Valuation Office Agency (VOA) was represented by Mr David Alford, and Mr Christopher Tawonezvi BSc (Hons) MSc MRICS gave expert evidence on their behalf. The appellant sought a revised assessment of rateable value £97,000. At the Valuation Tribunal hearing the Valuation Officer had successfully defended the compiled list assessment of £127,000 but subsequently decided that the assessment was excessive and should be altered to rateable value £121,000.

The Issue

4. The dispute relates purely to a question of valuation, namely the appropriate Zone A rate to be applied at the Antecedent Valuation Date (AVD). The appellant sought a figure of £1,600 per m² while the respondent asked the Tribunal to determine £2,000 per m².

The Legal Framework

5. Rateable Value is defined in Paragraph 2(1) of Schedule 6 of the Local Government Finance Act 1988, as amended by The Rating (Valuation) Act 1999 as: "... 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."
6. Statute requires that the appeal property be valued reflecting certain matters as they existed on the material day, which for the 2017 Non-Domestic Rating List and the subject property

is 1 April 2017, and by reference to values pertaining at the Antecedent Valuation Date (AVD) which is 1 April 2015. The matters which must be taken at the material day are set out in paragraph 2(7) of Schedule 6 Local Government Finance Act 1988. The matters relevant to the appeal are:

(a) matters affecting the physical state or physical enjoyment of the hereditament;

(b) the mode or category of occupation of the hereditament;

(c)

(d) Matters affecting the physical state of the locality in which the hereditament is situated or which, though not affecting the physical state of the locality, are nonetheless physically manifest there;

(e) the use or occupation of other premises situated in the locality of the hereditament.

The Facts

7. The property under appeal is a ground floor retail shop located on the western side of Upper Street, Islington, close to the junction of Upper Street and Berners Road. It forms part of a four-storey building the upper parts of which are occupied as flats. The shop itself is unusual in shape. The front part is essentially rectangular whilst the rear part is offset and trapezoidal in shape. Part of the rear area is masked and there is some intrusion from pillars. By the time of my inspection the appellants had vacated the property and had been replaced by a book retailer. I understand from the respondent that while in the appellant's occupation the property had timber floors which were covered with carpet and tiles, plastered walls, and an acoustic tile ceiling. Air conditioning, by means of ceiling mounted cassettes, was present at the compiled list date.
8. The parade of which the property forms part is about 140 metres in length and contains 24 shops and a public house. The shops are of various ages, sizes and configurations and are occupied by a combination of national multiple and local, independent traders. The Angel Underground station is situated about 250 metres to the south of the property. The Steam Passage Public House which is located at the northern end constitutes a significant break in the retail frontage.
9. At the southern extremity of the parade there is a break in the retail frontage to provide access to the Angel Central shopping centre. This part of the parade is also adjacent to a number of bus stops and a pedestrian crossing. The pavement that serves the southernmost third of the parade is noticeably wider than the remaining part and significantly higher than the road surface of Upper Street. By necessity the pedestrian crossing is reached by a series of steps and a ramp. The differential between the road and pavement level persists along the entire parade but it is less pronounced at the northern end where the property is situated.

10. The entire parade had been assessed for the purposes of the 2017 Rating List at £2,100 per m² Zone A and the respondent confirmed that despite the Rating List having been in use for three and a half years by the time of the hearing, none of the assessments had been the subject of a successful challenge and subsequent agreement. The adjacent parade to the south, that is beyond the entrance to Angel Central, is assessed at £2,500 per m² Zone A. The parade to the north, on the other side of Berners Road, is assessed at £1550 per m² Zone A.
11. Both parties confirmed that the property was occupied on a fully repairing and insuring lease that commenced on 25 June 2014 for a term of ten years. The initial rent of £105,750 per annum was reduced by 50% for the first six months. Surprisingly, neither party submitted a copy of the lease or a summary of the most salient terms. It was confirmed at the hearing that the VOA held a completed rent return form on file, but it too was not submitted in evidence.
12. The parties had agreed that the initial six months at half rent was representative of three months' rent free and that two months of that period should be treated as an incentive during fitting out. An agreed analysis of the initial rent based on finding the present value of capitalised income streams and deriving a rental value by means of an annual equivalent resulted in a figure of £1,713 per m² Zone A. The agreed analysis in terms of Zone A includes an allowance of 5% on the masked areas of Zones B and C as well as the Remainder.
13. The parties had identified the most pertinent rent evidence and had agreed the analysis for each transaction. These are set out in the table below. The VOA held rent return forms on each of these properties and Mr Tawonezvi brought them with him to the hearing, but I would have preferred for them to be in the hearing bundle so I could reach my own conclusions about the information supplied.

| Address | RV (£) | Area (m ²) | ITZA (m ²) | Effective Date | Transaction Type | Term (Yrs) | Rent | Effective Rent | Analysed Rent (£/m ²) |
|---------------------|----------|------------------------|------------------------|----------------|------------------|------------|----------|----------------|-----------------------------------|
| 23-24, UPPER STREET | £163,000 | 212.89 | 77.21 | 25/03/2015 | Lease renewal | 5 | £190,000 | £190,000 | 2,460.50 |
| 27, UPPER STREET | £95,500 | 192.74 | 45.58 | 01/03/2014 | Rent review | N/K | £97,500 | £92,625 | 2,032.14 |
| 29, UPPER STREET | £74,500 | 143.99 | 35.54 | 11/03/2015 | New lease | 10 | £76,000 | £73,137 | 2,057.88 |
| 31, UPPER STREET | £111,000 | 190.03 | 53.29 | 01/01/2016 | Rent review | 10 | £124,500 | £124,500 | 2,336.27 |
| 32-33, UPPER STREET | £148,000 | 189.45 | 70.4 | 01/02/2016 | Rent review | 15 | £157,808 | £157,808 | 2,241.59 |
| 40, UPPER STREET | £155,000 | 266 | 73.17 | 23/03/2015 | New lease | 10 | £115,000 | £108,556 | 1,458.17 |
| 42, UPPER STREET | £127,000 | 111.44 | 60.54 | 25/06/2014 | New lease | 10 | £105,750 | £103,758 | 1,713.00 |

14. No. 23-24 Upper Street is a double unit situated at the southern end of the parade near to the entrance of Angel Central. Nos. 27, 29, 31 and 32-33 Upper Street are all located adjacent to the pedestrian crossing. There is a marked difference in size between some of the properties and in particular No. 27 and No. 29 have narrow frontages whilst No. 32-33 is a double unit. The uses of these units are also quite disparate, and include a restaurant at No. 29, a salon at No. 31 and a building society at No. 32-33. No 27 is let on an internal repairing lease and No. 29 had a four month rent free period of which two months were treated as an incentive.
15. Further along the parade, No. 40 is occupied by Mountain Warehouse and is the largest of the properties referred to by the parties. The lease terms are unconventional insofar as the first years' rent was paid in advance, following which payment reverted to quarterly in advance. The rent in the second year was reduced by 50%. The property currently has the benefit of a first-floor sales area. It is unclear whether current configuration was in place at the date of the letting and the analysis is based on the previous usage as offices.

Evidence for the Appellant

16. Mr McCarthy appeared as an expert witness for the appellant. He is an Associate Director of Altus Group with six years' experience as a rating surveyor and deals with all types of property.
17. Mr McCarthy explained that he considered that Angel Central with its mix of multiple retailers, a cinema, health and fitness facilities and the O2 Academy Islington, was a 'major driver' of footfall in the locality. He thought that the Sainsbury's store on Liverpool Road, behind Angel Central also pulled customers through the shopping centre from Upper Street. He noted that there were a significant number of multiple retailers located close to the entrance to Angel Central and that what he described as a 'bus transport hub' was situated immediately outside that entrance.
18. These factors led Mr McCarthy to the conclusion that there was a natural break in the parade at the point where the pedestrian crossing was situated, next to the northern most bus stop. He commented that it is at this juncture that those arriving by bus disperse in different directions and that the pedestrian crossing is heavily used by those heading up to Essex Road on the other side of Upper Street. To prove this point Mr McCarthy had conducted his own pedestrian count on 13 September 2021, some six and half years after the AVD. He used three separate locations, outside numbers 23/24, 30 and 42 as his reference points. He observed that over a 30-minute period footfall was 56.91% higher at 23/24 than at 42. When I questioned his methodology, Mr McCarthy admitted that he had no previous experience of conducting such a survey.
19. Notwithstanding the obvious shortcomings of his pedestrian count, Mr McCarthy's opinion was that the southern end of the parade was more valuable than the north and this he said, was demonstrated by the rental evidence. Mr McCarthy said that he believed that the starting point for the determination of the assessment was the rent for the property itself which was agreed nine months prior to the AVD and was an open market letting at 'arm's

length'. However, he attached the greatest weight to the letting of 40 Upper Street. He noted the unusual terms but believed that the transaction was typical of modern lettings which had become more flexible in recent years. He supported his selection by reference to the fact that both parties were professionally represented and that the rent required minimal adjustment to be expressed in terms of rateable value.

20. Mr McCarthy preferred the new letting evidence and attached significant weight to the letting of No. 29 the analysis of which he said reflected its favourable position towards the southern end of the parade. He regarded the lease renewal at No. 23-24 as less useful but attached 'moderately high' weight to it because it was agreed within a week of the AVD. He thought that the high level of Zone A value could be attributed to the prime position that this property occupied, near the entrance to Angel Central and opposite the bus stops. Mr McCarthy additionally referred to No.47 which was the subject of rent reviews in September 2011 and 2016. The lease is for the whole building and stipulates that the upper parts can only be underlet only on a single assured short hold tenancy. No information about the letting of the upper parts is available. Mr McCarthy used a notional rent of £34,691 and a deduction of 33% for management charges to arrive at a net analysed rent of £1,835 per m² Zone A. This approach was highly subjective, and he rightly attached low weight to it.
21. Mr McCarthy was conscious that the value he sought was lower than the agreed rate in the previous Rating List. He therefore referred to two locations nearby where values had declined between the 2010 and 2017 Rating Lists. At Nos. 2-18 Chapel Market values had fallen from £540 to £475 per m² Zone A and at a very short stretch of Caledonian Road between Nos. 289 and 291 the Zone A rate had reduced from £430 to £350 per m². Mr McCarthy said that it was entirely possible that values at the northern end of the parade had declined given the continued development of Angel Central. He did not explain what development had taken place or the time frame.
22. Mr McCarthy concluded that there was a break at No. 29 where the pavement narrows, the bus stops end and there is a pedestrian crossing. The southern end of the parade is more attractive because of its proximity to Angel Central and this is reflected in the prevailing values which are higher than those at the northern end of the parade. His assessment of value for the property was £1,600 per m² Zone A.

Evidence for the Respondent

23. Mr Tawonezvi has been employed by the VOA since 2016. He focuses on London and carries out rating valuations on shops, offices and industrial properties.
24. Mr Tawonezvi thought that there was limited evidence close to the AVD and based his approach on looking at rents over a longer period to ascertain whether a trend could be discerned which would inform an opinion of whether rents fade over the northern section of the parade. In addition to the agreed comparables and No. 47, he had also examined the rents paid on Nos. 28, 30, 35, 36, 37, 39, 43 and 48.

25. I do not consider it necessary to set out the full details of each of these transactions as they mostly relate to rents that are too historic or too recent to be of assistance. Some involved the payment of premiums about which I have too little detail to enable a reliable analysis. However, I note that the rent review at No. 28 was concluded at £2,405 per m² Zone A in March 2016 and sits comfortably with No. 23-24. At No. 36 the review which was effective from December 2016 was finalised at £1,824 per m² Zone A. It is also worth mentioning that Mr Tawonezvi's analysis of the rent at No.47 produced a rate of £2,007 per m² Zone A (compared to Mr McCarthy's £1,835) which demonstrates how disparate interpretations can arise where subjective assessment is required.
26. Before moving on to the primary theme of Mr Tawonezvi's evidence it is worth recording his views on the agreed comparables. He used a simple categorisation of 'more weight' and 'less weight' with the former applied to the property itself, No. 23-24 and No. 29. Two of these properties are new lettings and the third is a lease renewal. He attaches less weight to No. 40 notwithstanding it too is a new letting and the lease start date was very close to the AVD. He commented that this was the only shop where there had been a drop in rent and suggested that it could be connected to the previous occupier having vacated due to liquidation. He also said that it was possible the landlord was prepared to accept less rent in return for the occupier paying a year's rent in advance. Nothing was provided in support of these views. Less weight was also attached to Nos. 31 and 32-33 as the evidence emanated from rent reviews.
27. Mr Tawonezvi also referred to No. 48 which was let from June 2012 and the rent was reviewed in June 2017. The two rents analyse to £1,939 and £2,149 per m² Zone A respectively, an increase of about 10.8% over five years. The property is arranged over four floors and all are in commercial use by the tenant. It was not clear how much weight he attached to either transaction.
28. Mr Tawonezvi considered that his preliminary examination of the evidence suggested that rents 'faded' at the northern end of the parade, but he went on to look at rental growth rates to check whether his conclusion was correct. I set out below a table he provided showing how rents had changed since 2010 for a selection of properties:

| <i>Number</i> | <i>Effective date</i> | <i>Analysed rent (£/per m² ZA)</i> | <i>Effective date</i> | <i>Analysed rent (£/per m² ZA)</i> | <i>Rental movement (%)</i> |
|---------------|-----------------------|---|-----------------------|---|----------------------------|
| 29 | 04/03/10 | 1,380 | 11/03/15 | 2,051 | +48.6 |
| 32-33 | 11/03/11 | 2,088 | 01/02/16 | 2,242 | +7.4 |
| 28 | 12/03/11 | 1,990 | 12/03/16 | 2,405 | +20.8 |
| 31 | 25/12/11 | 1,804 | 25/01/16 | 2,336 | +29.5 |

| | | | | | |
|----|----------|-------|----------|-------|-------|
| 48 | 04/06/12 | 1,939 | 06/06/17 | 2,149 | +10.8 |
| 36 | 19/09/12 | 1,459 | 01/12/16 | 1,824 | +25.0 |
| 40 | 05/10/12 | 2,118 | 01/03/15 | 1,458 | -31.2 |
| 37 | 23/11/13 | 2,203 | 01/05/19 | 2,290 | +3.9 |

29. Mr Tawonezvi also produced a graph showing that between 2010 and 2019 of sixteen shops on the parade only No. 40 had experienced a decline in value. His view was that the evidence strongly suggested growth over the period. He noted that No. 40 was inconsistent and that the growth at No.29 was very high in comparison to the others. At odds with his earlier categorisation, he subsequently decided that less weight should be attached to No. 29. His conclusion was that there was an annual growth rate over five years of 3%. Tellingly, he did not identify which five years he had in mind. He went on to explain that he considered there to be no evidence to suggest that there should be a break in the Zone A value, thereby continuing a trend established in previous lists. He did however acknowledge that his original Zone A basis was slightly excessive and proposed a revision to £2,000 per m².

Discussion and Determination

30. On the ground there are some obvious differences between the southern and northern sections of the parade, as the former is next to the entrance to the Angel Centre, the bus stops and the pedestrian crossing. The pavement is wider and more of the shops are occupied by national multiple traders. At the northern end of the parade there are more local traders, and the Steam Passage public house forms a significant break in the retail frontage, north of the property itself. Some of the shops are small or narrow, or both.
31. Both parties referred to *Lotus and Delta Ltd v Culverwell (VO)* [1976] RA141, and the respondent also cited *Special Eyes PLC v Felgate (VO)* (1992) RA 387 and *Lamb (VO) v Go Outdoors Ltd* (2015) UKUT 0366 (LC). Mr Alford pointed out that in both cases the Tribunal had concluded that the assessment should be set at a level higher than the analysis of the passing rent, albeit that the rents were effective from dates close to the AVD.

It is worth reiterating the guidance that the Tribunal (Mr J H Emlyn Jones FRICS) set out in *Lotus*:

- (i) Where the hereditament which is the subject of consideration is actually let, that rent should be taken as a starting point.

- (ii) The more closely the circumstances under which the rent was agreed both as to time, subject matter and conditions, relate to the statutory assumptions, the more weight should be attached to it.
 - (iii) Where rents of similar properties are available, they too are properly to be 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 hereditament.
 - (iv) Rating assessments of other comparable properties are also relevant. When a valuation is prepared these assessments are to be taken as indicating comparative values as estimated by the valuation officer. In subsequent proceedings on that list therefore they can properly be referred to as giving some indication of that opinion.
 - (v) In light of all the evidence an opinion can then be formed of the value of the subject hereditament, the weight to be attributed to the different 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.
 - (vi) In cases where there is no evidence of rents of comparable properties, a review of other assessments may be helpful, but in such circumstances it would clearly be more difficult to reject the evidence of the actual rent.
32. Starting with the rent on the property itself, there was a noticeable lack of detail about the terms of the letting. Mr McCarthy said that he had read the lease and that it contained nothing that warranted adjustment to bring the rent in to line with the statutory definition of rateable value. It was unsatisfactory that a copy of the lease was not available at the hearing, but I note that Mr Tawonezvi also made no adjustments having had sight of the rent return form. The rent was effective from June 2014, some 9 months before the AVD. Leaving aside the question of rental growth between June 2014 and the AVD, it seems to me that the experts have not made adequate adjustment for the shape of the unit in their agreed analysis. The irregular shape of the rear area would create practical problems in both fitting out and trading from the unit which would be reflected in the rent agreed. Adopting an overall allowance of 5% rather than just on the masked areas, the resultant analysis is £1,790 per m² Zone A.
33. The terms of the letting of No. 40 are unusual and although Mr Tawonezvi had speculated about how transaction had arisen, no evidence was adduced by either side by way of explanation. It is one of very few shops in the parade where there is a first-floor sales area, but the analysis is based on a configuration with the first floor as offices. It is not clear when the first floor was converted but if it were to be included in the analysis as sales space it would depress the resulting Zone A value still further. This rent was effective from 1 March 2015, just a month prior to the AVD and it would ordinarily be regarded as a transaction that would carry considerable weight. However, the unusual terms should have set alarm bells ringing with the experts, but they provided next to nothing in terms of detail. No. 40 is almost adjacent to the property itself and is suggestive of a decline in rental values of about 15% over 8 months, a scenario I regard as unlikely. Accordingly, I have some reservations about its usefulness.

34. The final new letting to consider is No. 29. Both experts attach significant weight to this transaction which was effective from 11 March 2015 and therefore almost contemporaneous with the AVD. Unusually for this part of the parade, the letting was to an independent trader. It has a narrow frontage but is located directly opposite the pedestrian crossing and near the bus stops. I consider this evidence to be useful.
35. The lease renewal at No. 23-24 is also worthy of examination, especially as both experts attached significant weight to it, albeit for different purposes. This property is a large modern unit situated close to the entrance to Angel Central. The rent passing, which was effective from 25 March 2015 devalues to £2,461 per m² Zone A. Unfortunately, the previous rent has not been divulged and as this is the highest rent to be disclosed by either party, I have some reservations about attaching the same weight to it as to the new lettings.
36. It might be considered that four transactions involving new leases within a period of 9 months and distributed relatively evenly in locational terms over a parade of 24 shops is sufficient to accurately identify a tone. The experts identified additional rent review evidence although much of it was either too early or late to be of much assistance and it tells me little that I cannot discern from the letting evidence.
37. Mr Tawonezvi confirmed at the hearing that there had been no settlements either by means of checks or challenges in the parade. Before I move on to my conclusions, I will deal with two additional aspects of the expert evidence. Firstly, I found Mr McCarthy's pedestrian count to be of no assistance. It was taken on just one day several years after the AVD. Secondly, Mr Tawonezvi's approach of looking at longer term trends in rental movements led him down the wrong path. He was so keen to demonstrate that nearly every rent had grown over a period that included the AVD that he lost sight of the task in hand which was to arrive at a value for the property. He correctly observed that rents had grown in this location but did not adequately explain how this translated into the tone he had arrived at.
38. In my judgment the evidence clearly demonstrates that values are lower at the northern end of the parade in comparison to the southern part. There is no obvious break point, and it is beyond the scope of this appeal for me to identify it. Similarly, I note Mr Tawonezvi's suggestion of a revised tone of £2,000 per m² Zone A but make no comment on it except to say that it is not, in my view, appropriate for the northern end of the parade. I have already discounted the notion of a large drop in values between June 2014 and the AVD and on the contrary there is nothing in the evidence that identifies whether and by how much rental growth was positive over this period. The rental evidence at No. 47 is difficult to analyse with any certainty and No. 48 is too far removed from the AVD to be of assistance. The rent review evidence at No. 36 demonstrates that rents at the northern end of the parade had not moved upwards by a noticeable degree between the middle of 2014 and the end of 2016.
39. I attach no weight to comparisons with previous Rating Lists or any significance to the fact that other parades nearby have declined in value since the 2010 List. Having considered all the evidence before me I determine that the Zone A value for the property should be reduced to £1,800 per m². I have already mentioned that I think it appropriate to allow for

the shape of the shop by adopting a 5% adjustment. The revised valuation is therefore as follows:

| | |
|--------------------------------|-----------------|
| Area ITZA 60.926 m2 @ £1,800 = | £109,667 |
| Less 5% for shape | £ 5,483 |
| Add for air conditioning | £ 490 |
| TOTAL | £104,674 |
| Say | £104,600 |

Costs

40. The appeal was heard under the Tribunal's simplified procedure under which costs are not normally awarded unless either party has behaved unreasonably, or the circumstances are in some other respect exceptional. I do not consider that either party acted unreasonably or that there are any such exceptional circumstances. I therefore make no order as to costs.

Mark Higgin FRICS FIRRV

Member Upper Tribunal (Lands Chamber)

31 December 2021

Right of appeal

Any party to this case has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the

Tribunal's decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.

