RA/83/2006

LANDS TRIBUNAL ACT 1949

RATING – hereditament – valuation – 2005 Rating List - tone of list – comparables – appeal allowed – Assessment increased to £26,750

IN THE MATTER of an APPEAL from a DECISION of SEVERNSIDE VALUATION TRIBUNAL

BETWEEN	**SARAH KATE BARTON (VALUATON OFFICER)**	**Appellant**
	and	
	CHARLES N BROWN (t/a CARDBAR LIMITED)	**Respondent**

Re: Unit 6, Clifton Down Shopping Centre, Whiteladies Road, Bristol BS8 2NN

Before: P R Francis FRICS

Sitting at: Bristol County Court, The Guildhall, Small Street, Bristol BS1 1DA
On 26 June 2007

The appellant Valuation Officer in person, with permission of the Tribunal
The respondent ratepayer did not appear and was not represented.

The following cases are referred to in this decision:
Lotus and Delta Ltd v Culverwell (VO) and Leicester City Council [1976] RA
Futures (London) Ltd v Stratford (VO) [2005] RA 47

DECISION

1. This is an appeal by the Valuation Officer from a decision of the Severnside Valuation Tribunal (the VT) dated 9 October 2006 which reduced the entry in the 2005 Rating List from a rateable value of £27,250 to £23,500 in respect of shop premises known as Unit 6, Clifton Down Shopping Centre, Whiteladies Road, Bristol. It was heard in accordance with the Simplified Procedure (Rule 28, Lands Tribunal Rules 1996). The appellant's case is that the VT failed to take account of relevant comparable evidence which clearly established a tone of list that supported a rental value of £450 per sq m in terms of zone A (ITZA) and produced a rateable value of £27,250. However, following re-measurement of the premises and agreement over areas with the ratepayer, the VO contended for a value of £26,750. Whilst the respondent did not appear and was not represented at the hearing, he had signed a brief statement of agreed facts confirming the revised floor area of 114.81 sq m ITZA, that the plan produced by the VO was an accurate reflection of the layout of the premises, and that the only matter in issue was the determination of the correct rateable value. In correspondence with the Tribunal, he said he was content to rely upon the submission he had made to the VT and that in his view the RV should be determined at no more than £21,000.

Facts

2. From the statement of agreed facts, the VO's evidence and my unaccompanied inspection of the Clifton Down Shopping Centre and its immediate surrounds the day before the hearing, I find the following facts. Clifton Down is located in Whiteladies Road, the main route between Clifton and Bristol City Centre, and comprises an enclosed shopping centre originally constructed in 1980, and refurbished in 1999. At the material day it had approximately 7,780 sq m of retail space that included 15 shop units anchored by a Sainsbury's supermarket, together with car parking at upper levels and office accommodation. Principal pedestrian access is at the northwest corner of the mall, directly off Whiteladies Road. There are basement loading facilities serving the retail units. The appeal hereditament comprised, at the effective date (1 April 2005), a middle terrace shop unit with accommodation on ground floor and basement fronting the central square of the mall, immediately opposite the travelator that gives access to and from the 350 space customer car park above. The unit has a frontage to the air-conditioned mall of 5.74m, and a depth of 17.06m. The unit trades as Cardbar, specialising in the sale of greetings cards and related goods, and other occupiers in the centre include WH Smith, Boots the Chemist, Starbucks Coffee, Holland and Barrett (healthfoods) and an Orange mobile phone shop.

3. The material and effective dates for this appeal are agreed at 1 April 2005, at which date the premises were entered in the compiled non-domestic Rating List as shop and premises, Unit 6, Clifton Down Shopping Centre, Whiteladies Road, Bristol BS8 2NN with a rateable value of £27,250. A proposal to alter the list was made by the ratepayer on 23 June 2005 on the grounds that the entry was inaccurate and, being an increase of 38% over the 2000 Rating List value of £19,750, when other shops in Bristol had increases of 5.75%. That appeal was heard by the Severnside Valuation Tribunal on 12 September 2006, at which the VO sought to defend the assessment by having regard to a number of comparable settlements on shops within the centre, and argued that a tone of list had been established. The VT issued its decision on 9 October 2006. In it, they said:

"The tribunal noted that the Valuation Officer had referred to [the definition of rateable value set out in Schedule 6, paragraph 2 of the Local Government Finance Act 1988, as amended by Schedule 5 of the Local Government Finance Act 1989] in aid of her case. However, neither party gave any supporting evidence, other than blandly stating the rent passing, as to any relevant rental evidence. From what the appellant had stated, the tribunal considered that the level of rent being paid on this property was difficult to sustain since it was set. The tribunal considered it unusual for a shop in such a trading position not to see an increased rent on a five year review. This was born out by the much lower assessment put on the property by the Valuation Officer who spoke to the lower level of value.

With no rental evidence or analysis put forward, the tribunal might have expected evidence of comparison. However, apart from reference to the agreed level of value for zone A in a few cases none was put forward.

The tribunal thus reasoned that with little or no evidence of substance put forward to justify the present level of assessment, it must look at whether or not the increase made from the 2000 Rating List to the current list was justifiable. The tribunal was not convinced that such an increase in the level of assessment with no reported change to the property was warranted with no substantiating evidence.

After much deliberation, the tribunal determined that the assessment of the appeal property should be £23,500 and the appeal was allowed to this extent."

4. The VO appealed this decision to the Lands Tribunal on 1 November 2006 on the grounds that its decision was incorrect, insufficient and bad in fact and law and the respondent gave notice of intention to respond on 31 January 2007.

Issue

5. The sole issue for my determination is whether to rateable value has been correctly assessed.

Appellant's case

6. Mrs Barton produced a comprehensive expert witness report and appendices. She said that the decision of the VT was not accepted because it had relied upon the nil increase in rent that had been negotiated by the ratepayer on the 2005 rent review as part of its reasoning for the level of value adopted. This, she said, was flawed because the dates at which the rent passing had been considered (September 2000 and September 2005) were inconsistent with the antecedent valuation date of 1 April 2003 and it was also evident that the initial rent, in 2000, had been set at a very high level. The VT had appeared therefore to have lost sight of that high initial rent as being a reason for the nil increase at review. Furthermore, the VT had failed to attach any weight to the evidence that had been presented in the form of 5 settled assessments

7. The rating hypothesis, Mrs Barton said, requires valuations to be carried out on the basis of rental evidence, where this is available, and the comparative method is preferred where the subject premises are rented or where there are sufficient comparative rented properties to provide reliable evidence. As the life of the rating list progresses, settled and unchallenged assessments on similar hereditaments establish the agreed level of values (tone of the list) which can also be used in the comparative valuation process. In considering the subject premises, Mrs Barton said her valuation followed the 'six propositions' set out in the Lands Tribunal case of *Lotus and Delta Ltd v Culverwell (VO) and Leicester City Council* [1976] RA 141 where the Member, J H Emlyn-Jones FRICS said, (at 153):

> "In the light of the authorities, I think the following propositions are now established:
>
> (i) Where the hereditament which is the subject of consideration is actually let, that rent should be taken as the starting point.
>
> (ii) The more closely the circumstances under which the rent is agreed both as to time, subject matter and conditions relate to the statutory requirements...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) Assessments of other comparable properties are also relevant. When a valuation list 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 the 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 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 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 clearly be more difficult to reject the evidence of the actual rent."

8. Looking firstly at proposition (i), Mrs Barton said that the rent set for the subject premises in September 2000 at £37,500 pa devalues to £642.78 per sq m in terms of Zone A. There are two reasons why this should be afforded little weight. Firstly (proposition (ii), both the date at which the rent was set, and the review date at which it was not increased, were far removed from the antecedent valuation date. Secondly (proposition (iii), it is clear from an analysis of the rents passing on the other comparable units within the shopping centre, that the subject premises were substantially over-rented. She provided a summary schedule and individual breakdowns of rents passing on all the other units which (apart from the Sainsbury's unit which was not comparable in terms of size) showed a range from £449 per sq m (Boots which was 5.5 times the size) to £572 per sq m for the Specsavers unit which was broadly similar in size (in terms of Zone A), was let at the same date as the subject and where the rent was not increased at the 2005 review. There was thus nothing in the comparables in the

immediate vicinity that could support an argument that £642 ITZA represented the correct rental value at any stage between 2000 and 2005. In the light of the evidence, Mrs Barton said that her assessment of the subject premises at £450 per sq m in terms of Zone A was not excessive.

9. Moving to proposition (iv), that "it is now well established that assessments of comparable properties in the List may be evidence of value", she said that whilst it was accepted it was still fairly early in the life of the 2005 Rating List, a number of the assessments of shops within the centre had been challenged, and settled by negotiation. She produced a summary schedule and the individual calculations relating to the appeals on 6 units, all of which were based upon £450 per sq m and had either been agreed with the occupiers' agents or withdrawn. In the light of this evidence, Mrs Barton said that she believed an established pattern of values has emerged and, following the recently decided case of *Futures (London) Ltd v Stratford (VO)* [2005] RA 47, this pattern of values can be said to have established a "Tone of the List" which in the case of units within this centre, was £450 per sq ft ITZA. She produced her valuation which, on the agreed floor areas and calculated on that basis, gave a Rateable Value of £26,750.

Respondent's Case

10. In his submission to the VT, Mr Brown said that the situation in the retail industry is currently dire, and that his company had had to close two other shops due to rising business rates, upward only rent reviews and unaffordable additional staff costs due to the minimum wage. He said that whilst he was fortunate that the owner of the Clifton Down Shopping Centre had sensibly agreed not to increase the rent on the subject premises in 2005, a 38% increase in rateable value, which did not set well with a nil rent increase, would drive the shop into loss with the inevitable subsequent risk of closure. Furthermore, the recent closure of Macdonalds had had a detrimental affect on footfall in the Centre, and this was another threat to his trade. The increase in rateable value on the company's other store in Bristol, 65 Horsefair, at the 2005 revaluation was only 6% and any argument from the VO that was possibly due to impending redevelopment was unsustainable, as such a redevelopment would also impact on the subject premises.

11. Mr Brown concluded by saying that in his view, £21,000 was the correct figure.

Conclusions

12. I am entirely satisfied that the Valuation Tribunal was wrong to dismiss the VO's evidence as it did, although, as I said to Mrs Barton at the hearing, it might have been helpful to the VO's case if the same level of detail had been provided to the VT as was the case at this hearing. The evidence before me clearly demonstrated that the rent payable by Mr Brown from September 2000 at £37,500 pa, or £642 per sq m, was more than the prevailing levels at that time, and also appeared to be so at the review date in 2005. Thus, I accept Mrs Barton's submission that little or no weight can be attached to it in performing the valuation exercise that is required.

13. It is also clear that a tone of list has been established and in terms of the sequence of propositions referred to in *Lotus and Delta*, it was in my view correct for the VO to attach significant weight to the settlements agreed with occupiers and their agents in respect of the 2005 Rating List. In my judgment, a tone of £450 per sq m has been established, and I can see no reason why the assessment on the subject premises should in any way differ. They occupy a central and highly visible position within the main mall, directly opposite the main pedestrian access from the upper floor parking areas, and there was nothing in the ratepayer's submissions that could lead me to conclude that an exception should be made in this case.

14. The appeal is therefore allowed, and I direct that the assessment on the subject premises be altered to Rateable Value £26,750 in the 2005 Rating List. The matter being heard under the simplified procedure the question of costs only arises in exceptional circumstances. No such circumstances exist in this case and I therefore make no award.

Dated 18 July 2007

(Signed) P R Francis FRICS