THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2010 rating list; challenge against compiled list entry; kiosk and premises; accuracy of rateable value; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal dismissed.

RE: Unit 310 & Unit 311, The Shard Arcade, London Bridge Station, London SE1 9SG

APPEAL NUMBER: 584034996620/521N10

BETWEEN:	S Lyons Ltd	Appellant
	and	
	Mr A Ricketts (Valuation Officer)	Respondent

PANEL: Mr D Greensmith (Presiding Senior Member)
Miss L Moses (Senior Member)

CLERK: Miss F Willson

REMOTE HEARING ON: 22 November 2022

APPEARANCES: Mr M Austin (the representative for the appellant)
Mr G Singh (on behalf of the Valuation Officer).

Summary of decision

1. Appeal dismissed. The panel confirmed the rateable value (RV) of Unit 310 & Unit 311, The Shard Arcade, London Bridge Station, London SE1 9SG (subject property) at £25,000 with effect from 1 November 2015.

Introduction

2. This was a 2010 rating list appeal in respect of the subject property which had been entered in the 2010 Rating List as ‘kiosk and premises’ at a RV of £25,000 with effect from 1 November 2015.

3. The appeal arises from a proposal dated 28 March 2019 made by Conneely Tribe on behalf of S Lyons Ltd in respect of the entry in the 2010 rating list at £25,000 with effect from 1 November 2015. The two units were originally separate hereditaments and the appellant included in the proposal that the two kiosks should be merged into one single hereditament which the Valuation Officer (VO) agreed to. The subject property was entered as a new hereditament into the rating list with an RV of £25,000 from 1 November 2015. The appellant still sought a revised RV of £19,500. After considering the merits of the proposal, the VO determined that it was not well founded. The appellant made an appeal to this Tribunal against the decision which was received on 24 April 2019, on the grounds that the existing RV was not reasonable.

4. Mr Austin appeared on behalf of the appellant as both 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 Austin stated that he was instructed under a conditional fee arrangement. He declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and 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.

5. The subject premises comprises a kiosk of 16.50m^2 which is part of the London Bridge regeneration project. The subject property is located between The Shard and The News Building as part of retail space on the ground floor. The subject property is part of the ground floor retail arcade..

6. This Tribunal decision document is not and does not purport to be a verbatim record of proceedings but the parties can be assured that all of the evidence presented was fully considered by the panel before coming to its decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

Issue

7. The issue between the parties is the RV of the subject property specifically the rate per square metre.

Evidence and Submissions

8. Mr Austin submitted a bundle of evidence which included photographs and details of the subject property, his revised RV calculation, copies of correspondence between the parties and the issues in dispute. He submitted that the appeal should be allowed and the RV on the subject property should be reduced to £19,500.

9. Mr Singh referred the panel to his statement of case. He submitted that the RV of £25,000 was reasonable and asked the panel to dismiss the appeal.

Decision and Reasons

10. The appeal hereditament must be valued for the purpose of non-domestic rating on the basis of the rent at which it might reasonably be expected to let from year to year on a number of assumptions (see paragraph 2(1) of Schedule 6 of the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2008 (antecedent valuation date or AVD). Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 November 2015 (material day) for this appeal. When assessing the RV of any property, rating law also requires that the property must be assumed to be 'vacant and to let' and in the state set out in Schedule 6 of paragraph 2(7) of the Act, in relation to both the physical nature of the property and its mode or category of use.

11. The panel had regard to the Lands Tribunal judgment of *Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141*, as referred to by both parties. 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 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 VO. 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.'

12. Mr Austin explained to the panel that Three Wheels Coffee had negotiated a lease for unit 312 for the rent of £15,000 pa and the RV was set by the VO at £14,750 which was based on the rent for the unit with the difference between the rent and the RV being 1.66%. The company took occupation on 1 May 2015 for one year with a break clause at three months and with no provision for a rent review. Mr Austin therefore submitted that the double unit occupied by the appellant under a lease dated 19 October 2015 and which was renewed on 20 June 2018 for a rent of £20,000 pa should have an RV of 1.66% lower than that rent

being £19,500. He also stated that units 310, 311 and 312 on The Shard Arcade had also had their RV determined in accordance with the rent passing when they were in the rating list as one assessment. He drew the panel's attention to the case of *Lotus and Delta* in which the lease on the subject assessment is the starting point when setting an RV.

13. The panel was aware that the case of *Lotus and Delta* did place weight on the rent of the subject hereditament but also went on to confirm that the rent on the subject property was only the starting point and that a basket of evidence was required to be taken into account when determining an RV.

14. Mr Singh submitted that the lease on the subject property contained specific terms which meant it differed from the rating hypothesis. In the case of *Lotus and Delta* this limited the weight to be placed on the rent as an open market rent. He outlined the following comparable evidence:

- The letter outlining the terms of the lease dated 19 October 2015 refers to the appellant's need to leave his previous property by 22 September which is the same date the Board would be determining whether they agreed to the lease. It also referred to trading continuity which Mr Singh submitted suggested there was a relationship of sorts between the landlord and tenant. The rating hypothesis refers to a tenant coming fresh to the scene.

- The letter also refers to the tenant being able to occupy kiosk 9 at a rental of £2,500 pa until the water ingress into kiosk 11(unit 310) is resolved. In connection with kiosk 10 (unit 311) the rent is to be apportioned and the rent for this kiosk will be £5,000 pa until the water supply and drainage issues are resolved. The appellant has a high class floristry business and so the water supply and water drainage would be essential and it would be imperative to resolve these issues and therefore is included in the terms of the lease.

- The fact that the rent for one kiosk was £15,000 but the appellant was leasing two kiosks for a rent of £20,000 pa suggested that the landlord had agreed to give the tenant a discount for taking on both units and that he may have been finding it difficult to let the kiosks. This would lead to the appellant being able to obtain a reduced rent.

These terms were specific to this lease and were not in line with the rating hypothesis and this, in his view made the lease unreliable as the sole basis for setting the RV.

15. Mr Singh drew the panel's attention to the fact that in the case of *Lotus and Delta* the rent on the subject property is one piece of evidence within the basket of evidence and that other rents, where available, required consideration in order to determine a RV. He argued that a tone had been established for rents on kiosks in the vicinity of the subject property which had been agreed over eight years from the Valuation date at the rate of £1,800/m^2. Mr Singh specifically referred the panel to the following

- On the 2 units which are now merged into the subject property a rate of £1,800/m^2 was agreed with Mr Marshall from Conneely Tribe per unit prior to the merger.

- Unit numbers 313 (4.35m^2) and 315 (2.80m^2) were similar small kiosks and their RVs had never been appealed in the 2010 rating list and have been assessed at £3,000/m^2 and £2,700/m^2 respectively.

- Unit 312 The Shard was agreed at £1,800/m^2 on an area of 8.25m^2 with a total RV of £14,750 and was agreed with Conneely Tribe with effect from 1 January 2016.

- Unit 2 The Shard was agreed at £750/m^2 on the shop area of 113.11m^2 and on the store of 12m^2 a discount of 50% of the value was given and 70% on the office space of 5.31m^2. An RV of £85,500 was agreed with an end allowance of 10% due to vacant units.

- Unit 3 The Shard was not appealed but was reduced to £37,500 with effect from 9 November 2015 with a shop of 53.6m^2 valued at £750/m^2, a small office of 3.15m^2 at 70% with an end allowance of 10% due to a vacant unit.

- Unit 5 The Shard has an assessment of £51,000 from 8 November 2016. It has a shop area of 68.7m^2 valued at £750/m^2 ancillary space of 13.4m^2 valued at 50% and an end allowance of 10% due to a vacant unit.

- Unit 6 The Shard was agreed at £750/m^2 with a shop area of 57.27m^2 and a small store at 50%. The RV was agreed at £41,500 with a 10% end allowance for vacant units with effect from 1 July 2015.

- Unit 7 The Shard has not been appealed but is 7.5m^2 and was valued at £3,000/m^2 from 1 June 2016 with no end allowances.

- Unit 14 The Shard has not been appealed and is 4.8m^2 and is valued at £3,000/m^2 from 14 November 2016 with no end allowances.

Mr Singh submitted that the above properties formed the basket of evidence and that supported an RV of £25,000 for the subject property.

16. The panel was aware that in the case of *Lotus and Delta* the basket of evidence used in the valuing of a property included that of the rate on comparable properties in the vicinity of the subject property. The panel put weight on the comparable properties provided by the VO which provided strong evidence to support a value of £1,800/m^2 on the subject property.

17. From the basket of rental evidence provided by the VO the panel was satisfied that the current assessment of the subject property at an RV of £25,000 was reasonable and the appellant had not provided any evidence to persuade the panel that it was excessive. The appeal is therefore dismissed.

Date: 13 December 2022

Appeal number: 584034996620/521N10

Right of 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.