VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeals; 2017 Rating List; restaurant and premises; Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council [1976] RA 141; tone of value of main space; comparable assessments; appeal allowed in part.

APPEAL NUMBER: CHG100036064

RE: Units 8-9 Southgate, Bath BA1 1AQ ("the subject hereditament")

BETWEEN: SB Realty Ltd — Appellant

and

Lucy Formela-Osborne (Valuation Officer) — Respondent

SITTING: *remotely using Microsoft Teams*

ON: 3 June 2024

BEFORE: Mr P Hickson (Presiding Senior Member)
Mr K Everett (Senior Member)

CLERK: Mr S Fletcher IRRV (Hons)

APPEARANCES: Mr D Matheakis of Jones Lang LaSalle (Appellant's representative)
Mr J Stamper (Respondent's representative)

DECISION and STATEMENT OF REASONS

Decision

1. The appeal was allowed in part. The panel determined the rateable value (RV) of the subject hereditament to be £126,000 with effect from 15 May 2017.

Introduction

2. The appeal process began with a challenge made by the appellant's representative on 19 October 2021 in respect of the Valuation Officer's (VO) rating list entry of the subject hereditament at £172,000 RV with effect from 15 May 2017. The appellant's representative

proposed a revised assessment of £92,500 RV from that date based on a reduced value for main space.

3. The respondent issued a challenge case decision notice on 23 January 2023, which stated that based on the evidence available, the existing rating list entry of £172,000 RV was unreasonable and determined a revised entry of £138,000 RV with effect from 15 May 2017. The revised RV accounted for a reduced main space rate from £750 per m^2 to £600 per m^2. The appellant's representative appealed that decision to this Tribunal on 30 August 2023 on the grounds that the valuation for the subject hereditament remained unreasonable and sought a main space rate of £400 per m^2.

4. The subject hereditament was a restaurant and premises located in the Southgate Shopping Centre in Bath and had a total area of $310m^2$ split over the ground and first floors. The property comprised kitchen facilities, storage space, toilets and a restaurant seating area which was on both floors.

5. Mr R Matheakis 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), the representative confirmed 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 the client's case.

6. The panel accepted this expert witness evidence on the above basis as the parties agreed the appeal was not complex and to do otherwise would be contrary to regulation 3 (Discharge of Valuation Tribunal for England (VTE) functions – general) of the Procedure regulations and was allowable due to the Tribunal's rules on 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.

7. This decision document is not and does not purport to be a verbatim record of proceedings.

Preliminary Issues

8. Prior to the hearing, Mr Matheakis requested for the hearing of the appeal to be postponed. His request was sent to the Tribunal and the respondent by email on 31 May 2024. Mr Matheakis stated that an agreement had been made on that day for a nearby hereditament, Pizza Express, 8 Southgate Place, Bath 1AP, which had also been under appeal and had been referred to in the subject appeal. He requested additional time to consider the agreement. The respondent did not object to a postponement. The Tribunal refused the postponement on the grounds that the subject appeal was not listed to be heard until 13:00 the following working day. As such, the Tribunal considered there was sufficient time to review the agreement prior to the hearing.

9. Prior to hearing the substantive issue of the appeal, Mr Matheakis objected to the reference of Zone A values within Bath, which were sent by email by Mr Stamper on 31 May 2024. Mr Stamper referred to those values in response to two additional comparable properties submitted by Mr Matheakis which were 8 & 9 Saw Close, Bath. Mr Stamper also submitted an additional comparable property in 10 Southgate, Bath, which was occupied by Greggs. The parties did not object to the inclusion of the additional comparable properties, however, Mr Matheakis did object to the reference of Zone A values.

10. The panel was aware that the Standard Directions for evidence disclosure stipulate that any late evidence which the parties do not agree to its admission must relate to the grounds on which the proposal was made, was not known to the party and could not have been reasonably acquired by the party before the proposal was determined. In considering that point, it must be stated why the evidence was not available earlier, and when it came into the possession of the party. The panel was satisfied that the evidence pertaining to Zone A values was not available earlier as it was in response to an additional comparable assessment submitted by the Mr Matheakis four weeks prior to the hearing. However, any late evidence, of which reference to the Zone A values did amount to new evidence regardless of it being a response, must be submitted no later than four weeks from the hearing. As such, the Standard Directions pertaining to evidence disclosure were breached by Mr Stamper.

11. The panel had regard to *Simpsons Malt & Others v Craig Jones (VO) & Others* [2017] UKUT 0460. In this case, the Upper Tribunal's guidance to Tribunal panels in the instance of a breach of standard directions was that the three-stage test as outlined in *Denton v TH White Ltd* [2014] WLR 3926 should be undertaken before considering whether or not to impose a sanction. The test reads as follows:

Stage 1 – if panels conclude that the breach is not serious or significant then relief from sanctions should usually be granted (para. 53).

Stage 2 – the panel need to consider why the failure or default occurred. The burden is on the defaulting party to persuade the Tribunal to grant relief. They must explain what happened and why. Illness or accidents are good reasons but overlooking a deadline is not (para. 54).

Stage 3 - The panel must consider all the circumstances of the case including:

(i) the need for litigation to be conducted efficiently and at proportionate cost;
(ii) a failure to grant a sanction may leave an inaccuracy being uncorrected;
(iii) the need to enforce compliance with rules, directions and orders (para. 55).

12. The appellant stated that he would be prejudiced if the reference to Zone A values were permitted as he had not had sufficient time to research them himself given that the email was sent on the Friday afternoon prior to the hearing of the appeal on Monday afternoon. Mr Stamper stated that the reference to Zone A values was in response to the additional comparable evidence submitted by Mr Matheakis.

13. The panel considered the breach and determined it was not serious or significant in this instance. Mr Stamper could not have been expected to submit such evidence four weeks prior to the hearing as required by the directions, as it was in response to additional comparable properties which were submitted by Mr Matheakis at that four-week stage. The

panel found the evidence to be brief in nature, and, like the agreement at Pizza Express, it considered there was still reasonable time for Mr Matheakis to peruse it prior to the hearing. As such, the panel granted relief from sanction at stage 1 of the *Denton* test and admitted the evidence.

Issue

14. The issue for the panel to determine was the correct rateable value to be attributed to the subject hereditament in the 2017 rating list. The issue in dispute concerned the tone of value for the main space. All adopted relativities were agreed by the parties.

Evidence and submissions

15. Arguments and factual evidence from both the appellant's representative and the respondent was provided. This comprised documentation exchanged between the parties as part of the challenge process, the appellant's representative's challenge submission, a map demonstrating the location of the subject, the respondent's challenge decision notice and reference to, and photographs of, properties deemed comparable to the subject hereditament. The Lands Tribunal's judgment of *Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council* [1976] RA 141 was also referred to.

Discussion

16. The subject 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 be let from year to year on a number of assumptions. Those assumptions are listed in paragraph 2(1) of Schedule 6 to the Local Government Finance Act 1988.

17. In accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI:2014 No.2841), the date of the hypothetical rent was 1 April 2015, the antecedent valuation date (AVD). This common date was used to ensure that every property was treated in a consistent way.

18. Matters that affected the physical state or enjoyment of the property or the locality were to be taken at the material day, as outlined by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject hereditament, the material day is 15 May 2017.

19. It is a well-established rating principle that the starting point in the determination of a property's RV should be the rent passing on the subject hereditament itself as held in *Lotus and Delta.* The lease on the subject was taken from 25 December 2016 for a term of fifteen years at an initial rent of £175,000 with thirteen months' rent free. Both parties contended that little weight could be attached to the subject rent given it was over eighteen months post the AVD.

20. When presented, rents on similar properties could also be considered. The respondent referred to Pizza Express, 8 Southgate Place, and Unit 11 Southgate Place. Pizza Express had a rent agreed following a rent review on an FRI basis of £187,500 per annum (p.a) with effect from June 2015. The respondent analysed that rent to £741.14 per m^2, which it contended supported an unadjusted rate of £750 per m^2. That assessment was also challenged and under appeal. The tone of value for main space had been subsequently

agreed between the respondent and a rating agent at £550 per m^2 with effect from 19 April 2018. Unit 11 Southgate was a new letting with effect from 4 August 2014 at £150,000 p.a with an eighteen-month rent free period. The respondent analysed its rent to £622.36 per m^2, ignoring the first three months for fit-out on an FRI basis. Mr Stamper argued that those two comparable assessments were, like the subject, located in a prime shopping location in close proximity to the train station where there was significant footfall.

21. Mr Matheakis argued that little weight should be applied to the rental evidence of Pizza Express as it was a rent review with a nil increase and therefore was not reliable market evidence. He argued that little weight should be given to the rental evidence of Unit 11 Southgate Place as it was subjective due to the method adopted by the respondent in the analysis of the rent.

22. Both parties provided comparable assessments to support their respectively argued tone of value at the subject. Mr Stamper had referred to 10 Southgate, the neighbouring property to the subject. The panel attached little weight to that comparable as it was assessed using a different method of valuation. Mr Matheakis referred to the assessments of Absurd Bird and Tapas Revolution which were located on St Laurence Street. Their tone of values for main space was £400 per m^2 and had been agreed by the respondent following challenges. He argued that they were located on a main thoroughfare from the train and bus stations, which benefitted from high usage due to the lack of parking facilities in the city centre. A large Debenhams store was also trading at the AVD and the material day, and fronted St Laurence Street, a factor Mr Matheakis argued further drew footfall to the area.

23. Mr Matheakis referred to comparable assessments at Brunel Square, which had a tone of value for main space of £325 per m^2. He argued that those properties were also located in a prime location being directly outside the train and bus stations with direct access into Southgate Shopping Centre. Mr Matheakis also referred to 8 and 9 Saw Close which had their tone of value reduced following challenge from £550 per m^2 to £400 per m^2. He argued that the properties were located in an area of restaurant occupiers which were well placed to benefit from passing trade from visitors to the Theatre Royal Bath.

24. Mr Stamper argued that Absurd Bird and Tapas Revolution were located down a side street off the main shopping area which did not benefit from high levels of footfall or other commercial premises. He stated that they had limited visibility from the main high street so were less desirable for occupiers and achieved significantly lower rents than those within the Southgate Shopping Centre. He disagreed with the contention of Mr Matheakis that the primary method of access to the city centre was through public transport as many shoppers were able to arrive by their own private vehicles, or already lived within walking distance of the centre.

25. Mr Stamper agreed with Mr Matheakis that Saw Close was a vibrant and busy area with people visiting the Theatre, however, he argued that rents achieved in the area were significantly less than those in the Southgate Shopping Centre, which commanded higher rents where competition was rife for properties in such a prime location.

26. The panel agreed with the parties that little weight could be attached to the subject rent, given it was in excess of eighteen months post the AVD. It found that properties located within the Southgate Shopping Centre would achieve higher rents than those in the areas of the comparable assessments provided by Mr Matheakis. Although St Laurence Street benefitted from footfall from those arriving from public transport, the panel considered that

Southgate Shopping Centre was a focal point, which comprised many different retailers, restaurants, bars and a cinema in one complex, and therefore attracted the majority of visitors to the city centre. Saw Close was even further away from the train station. It was clear to the panel that premises within Southgate Shopping Centre would be more desirable to a hypothetical tenant, and therefore attracted higher hypothetical rental bids, than those either on the approach to it, or those further remote from it.

27. The tone of value for main space at Pizza Express, which was located within Southgate Shopping Centre, had been agreed at £550 per m^2. The panel determined that tone was also reasonable for the subject hereditament given the similarities in terms of character and locality between them. The panel found that the analysed rent, which was a new letting and in close proximity to the AVD and therefore reliable, at Unit 11 also supported the tone of value for main space of £550 per m^2.

28. The revised assessment for the list entry with effect from 15 May 2017 as determined by the panel was as follows:

COMPONENT PARTS OF PROPERTY				
Floor	**Description**	**Area m^2/unit**	**£ per m^2/unit**	**Value (£)**
Ground	Restaurant	129.55	550.00	71,253
Ground	Kitchen	24.1	385.00	9,279
Ground	Public Toilets	4.62	275.00	1,271
First	Restaurant	84.67	385.00	32,598
First	Internal Storage	33.82	192.50	6,510
First	Plant Room	4.25	0.00	0
First	Staff Toilets	7.36	0.00	0
First	Public Toilets	13.44	192.50	2,587
First	Public Toilets	8.97	192.50	1,727
Total				
ADDITIONAL FEATURES OF THE PROPERTY INCLUDED IN THE VALUATION				
Air Conditioning system		214.22	7.00	1,500
Total				**1,500**
			Valuation sub-total	**126,725**
			Say RV	**126,000**

29. The panel therefore allowed this appeal in part as it considered the respondent's valuation of the subject hereditament was unreasonable, but not to the extent as sought by the appellant's representative.

Disposal

30. In view of the foregoing, the appeal was allowed in part.

31. In accordance with Regulation 38(4) and (9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the respondent is ordered to alter the subject hereditament's entry in the rating list to £126,000 RV with effect from 15 May 2017. The respondent must comply with this order within two weeks of its making.

32. Any fee paid will be refunded in full in accordance with regulation 13E of the above Regulations.

Date: 13 June 2024

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.

Addendum

Following the release of the panel's decision on 13 June 2024, the respondent's representative drew the Tribunal's attention to clerical errors in the decision record and the Order.

The original decision incorrectly showed that the rateable value had been determined by the panel to be £131,250 with effect from 15 May 2017. This was based on incorrect relativities used to calculate value for internal storage and public toilets.

The decision record has therefore been altered and reissued under Regulation 39 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009.

Date when amended decision was released: 28 June 2024