THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating; 2017 Rating List; Club and premises; Price per square metre; Assessment of comparable properties; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal allowed in part.

Re: 44 Bridge Street, Walsall, WS1 1JG

APPEAL NUMBER: CHG100060444

BETWEEN:	Utopia Clubs Limited	Appellant
	and	
	Mr D Virk (Valuation Officer)	Respondent

PANEL: Mrs AE Fielder (Senior Member)

CLERK: Miss K Hendry IRRV (Tech)

REMOTE HEARING on Tuesday 1 December 2020

APPEARANCES: Mr K Rabbette of Paul Rabbette Ltd (expert witness on behalf of the appellant)
Mr P Griffin on behalf of the Valuation Officer

Summary of decision

1. Appeal allowed in part. I confirmed a revised rateable value (RV) of £38,250 with effect from 1 April 2017.

Introduction

2. This appeal has been brought in respect of the following: 44 Bridge Street, Walsall, WS1 1JG which was entered in the 2017 rating list as “Club and premises” at rateable value £46,000 effective from 1 April 2017.

3. Following the Challenge submitted, the Valuation Officer proposed that the rateable value should be reduced to £42,250 with effect from 1 April 2017. This was based on the unadjusted rate of £60/m^2 being reduced to £55/m^2. However, Mr Rabbette was seeking for the unadjusted rate to be reduced to £42.75/m^2.

4. The appellant’s challenge proposal to the Valuation Officer was made on 23 November 2018. The Valuation Officer issued a challenge decision on 15 April 2020. The appellant’s

appeal to the Valuation Tribunal for England (VTE) was received on 15 April 2020, and made on the grounds that the valuation for the hereditament is not reasonable.

5. The President of the Valuation Tribunal for England (VTE) is required to make sure arrangements are in place and make such statements and Directions so as to ensure that business before the Tribunal is conducted in accordance with the Local Government Finance Act 1988, Schedule 11, Part 1, paragraph A17(1) and the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 and by virtue of Part 2 regulation (5) (arrangement for appeals) and regulation (6)(3)(g) (appeal management powers) the VTE may determine the form of any hearing.

6. Therefore, in pursuance of regulation (6)(3)(g) the VTE has incorporated "remote hearings" as part of that definition and for the time being as the default option until it is safe to return to normal working. The Tribunal's Consolidated Practice Statement has been amended to reflect this.

7. In accordance with the Tribunal's Business Arrangements, I have been authorised to consider and determine this appeal alone.

8. Mr Rabbette 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 Rabbette's declaration of truth included a statement that he was instructed under a contingency based fee.

9. Mr Rabbette's declaration confirmed 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.

10. I accepted this expert witness evidence on the above basis as the appeal was not 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 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).

11. I therefore considered the "expert" evidence and attached such weight to it as I saw fit.

12. The appeal property is a large three storey nightclub situated in Walsall town centre. It was originally constructed as a granary before being converted. It is of awkward layout, being irregular in shape with solid internal dividing walls, structural columns and staircases interrupting the accommodation throughout. This has been reflected by an agreed 5% end allowance given for layout in both the 2010 and 2017 rating lists.

13. The nightclub is situated to the east of Walsall town centre, away from the retail district on Bridge Street. Opposite the club is Walsall's County Court and Tameway Tower, a monolithic 1960's built office block. Other shops on the street include several takeaways, off licences and some tertiary shops.

14. This is not intended to be an exhaustive record of the proceedings, but the parties can be assured that all of the evidence presented was fully considered by me before coming to its decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

Issue

15. The issue before me was the correct rateable value to be attributed to the appeal property in the 2017 Rating List.

Evidence and submissions

16. The appellant's representative, Mr Rabbette, had provided the Tribunal with both parties' submissions.

17. Mr Rabbette was seeking a revised rateable value of £34,500 and relied on the following evidence:

    a. An agreement was reached in the 2010 list in which the RV was reduced from £67,000 to £46,000. This saw the unadjusted rate reduced from £70/m^2 to £60/m^2. Following the challenge, the Valuation Officer reduced the 2017 rating list from £46,000 to £42,250. The unadjusted rate went from £60/m^2 to £55/m^2. This demonstrates a reduction in RV between the two lists of 8.87%.

    b. However, Mr Rabbette stated in his opinion this did not reflect the reductions in value in the nightclub industry between 1 April 2008 and 1 April 2015. Section 6, Part 3, Section 720 of the Valuation Office Agency's Rating Manual provides some indication of the macroeconomic changes to the nightclub industry between the two antecedent valuation dates (AVD) of 1 April 2008 and 1 April 2015:

        > Generally *"The late night entertainment scene has experienced a fundamental change and nightclubs have been hit by a combination of several factors which has led to a significant decline in market share."*
        > On licencing*: "It now demands a very good offer from a nightclub to incentivise the late-night reveller to move from a public house or bar providing late night entertainment to a venue that charges entry fees with the associated queues at security points."*
        >
        > On attendance: *"According to Mintel, in 2007 there were 178 million admissions to nightclubs, this figure had fallen to 133 million by 2012 and predictions are that this will fall to around 107 million by 2017".*
        >
        > Mintel also reported that revenues within the nightclub industry fell from £1.49bn to £1.18bn from 2010 to 2015, a 26.3% decrease.

    c. Mr Rabbette argued that the Valuation Officer had given a reduction in the unadjusted rate to £55/m^2 on the basis that was the basic movement of values between the 2010 and 2017 list. However, the 2017 list should be considered de novo as stipulated in the case of *Barnard & Barnard v Walker (VO*) [1975]. It does not state in *Lotus & Delta v Culverwell (VO) & Leicester City Council* [1976] RA 141 that values in a prior list are considered when looking at the hierarchy of evidence.

    d. There are four nightclubs in Walsall. Two of them (the appeal property and Vogue Nightclub, Bradford Place, Walsall WS1 1PL) are owned and occupied by the ratepayer and therefore there is no reliable rental evidence for these two clubs. The other two have been assessed at an unadjusted rate of £50/m^2 in comparison to £55/m^2 for the appeal property.

e. The comparable properties are as follows;

   I. **Samra Club, Newport Street, Walsall, WS1 1RZ**

      This club measures 816.10m^2 and is situated on a prominent corner position between Bradford Street and Newport Street. Opposite is the Saddlers Centre, Walsall's principle shopping centre. It has been valued at an unadjusted rate of £50/m^2 .

   II. **The Lost Lounge, The Arcade, Walsall, WD1 1RE**

      This is a nightclub which is situated on the first floor of a shopping centre in the heart of Walsall. It has a total area of 257.50m^2. It has been valued at an unadjusted rate of £50/m^2 .

   III. **Vogue Nightclub, Bradford Place, Walsall, WS1 1PL**

      A purpose built nightclub situated in Walsall town centre directly opposite the Saddlers Shopping Centre. It is also close to the main bus station and a few minutes walk away from the train station. The unadjusted rate was reduced from £55/m^2 to £50/m^2.

f. Mr Rabbette also referred to other comparable properties from other localities, such as Stourbridge, Bromsgrove, Birmingham, and West Bromwich. The unadjusted rate for these properties ranged from £45/m^2 to £50/m^2.

g. It was Mr Rabbette's opinion that these properties supported the appeal property's unadjusted rate being reduced to £45/m^2. Therefore he contended that the RV should be reduced to £34,500.

18. To support the revised reduced rateable value in the 2017 list, the Valuation Officer relied upon the following evidence;

   a. The 2010 rating list was agreed with Mr Rabbette at £60/m^2 which has set the value relative for other clubs in the locality. In a number of cases the 2010 value has been reduced for 2017. Given that Mr Rabbette agreed the 2010 value of £60/m^2, it is unreasonable that he is now seeking a reduction to £42.75 which is a 40% difference between lists.

   b. Mr Griffin stated that the best comparable properties in terms of size and location were:

      Samra Club, 17 Newport Street which was located 0.3 miles away from the appeal property. It measures 519.5m^2 compared to 816m^2 for the appeal property. The Samra Club has remained static between the 2010 and 2017 rating lists and in isolation suggests that the 2017 assessment remaining at £60/m^2 appears sound. However having regard to other assessments and the changes relating to those, the appeal property was reduced to £55/m^2.

      The Lost Lounge, The Arcade is located near to the appeal property but is smaller in size. It has seen a reduction of 20% between the 2010 list at £60/m^2 and £50/m^2 in the 2017 rating list. This assessment supports the view that a reduction to £55/m^2 is reasonable.

c. Based on the two comparable properties above, the local evidence shows there has been a drop in the unadjusted rate between the two rating lists between 0% and 20%, which supports a revised price of £55/m^2.

d. In regards to Mr Rabbette's comparable properties from outside Walsall, they are a different locality and therefore will be less reliable. Although they do confirm a pattern where there has been some reduction from the 2010 and 2017 rating lists. In most cases, no more than 10%.

Decision and reasons

19. After due consideration of all of the evidence submitted by the parties, I determined that the appeal should be allowed in part.

20. In deciding this appeal I was governed by rating legislation laid down by Parliament which defines Rateable Value: Schedule 6 to the Local Government Finance Act 1988, as amended by Section 1(2) of the Rating (Valuation) Act 1999, defined that the Rateable Value of a non-domestic property shall be taken to be the amount equal to the rent at which it was estimated the property might reasonably be expected to let on a year to year basis on these three assumptions:

    i. The first assumption is that the tenancy begins on the day by reference to which the determination is to be made;

    ii. 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;

    iii. The third assumption is that the tenant undertakes to pay all the 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

21. For the 2017 rating list the 'day by reference to which the determination is to be made' is the AVD of 1 April 2015. Economic factors must be assumed to be as they were at that date for the purposes of estimating Rateable Value. Apart from the statutory assumptions as to reasonable repair, matters affecting the physical state of the hereditament, and the physical state of its locality, are taken to be as they actually were at the "material day". In determining any appeal under the above hypothesis, it is necessary to have regard to matters referred to in Paragraph 2 (7) of Schedule 6 to the Act, those being, broadly, the physical nature of the property and its locality, as they stood at the 'material day'. This date is determined in accordance with the grounds of the proposal giving rise to the appeal. The material day for the purposes of this appeal is 1 April 2017.

22. In order to determine the correctness or otherwise of the assessment of the appeal property, I looked at the evidence available.

23. I found authoritative guidance in the Lands Tribunal's judgment in *Lotus and Delta Ltd v Culverwell (VO) & Leicester City Council*, regarding the weighting of evidence. In all cases,

the passing rent on the appeal property should be used as the starting point in its consideration of the rateable value for the appeal property. The more closely that rent matched the rating hypothesis, then the more weight should be attached to it. In the absence of a rent, as in this case of the appeal property I turned to comparable properties to determine whether the adopted rate on the appeal property was excessive.

24. I considered the best evidence to be the three nightclubs within Walsall that had all been valued on a rate of £50/m^2. Mr Rabbette stated that he would have challenged the reduction on Vogue nightclub as in his opinion it should be a lower value but did not do so as it is a historic assessment. Given that it has not been challenged, I accept the correct value to be £50/m^2.

25. I placed very little weight on the comparable properties mentioned outside of Walsall as I accept the argument that they are a different market and each locality needs to be considered independently.

26. I do not consider that the appeal property should be valued any higher than the other nightclubs located within Walsall on the evidence of the declining market. The trend reflected that the preference was leant more towards late night clubs and bars rather than having to go and pay for access to a nightclub.

27. Therefore I confirm that the appeal property should be reduced from £55/m^2 to £50/m^2. The valuation is revised as follows:

Floor	**Description**	**Area**		**Unadjusted Rate**			**Rel.**	**Adjusted Rate**			**Value**	
Ground	Dance Floor	320.60	m²	£	47.50	per m²	1.05	£	49.88	per m²	£	15,990
Ground	Dance Floor	28.40	m²	£	47.50	per m²	1.00	£	47.50	per m²	£	1,349
Ground	Dance Floor	14.60	m²	£	47.50	per m²	1.00	£	47.50	per m²	£	694
Ground	Office	8.20	m²	£	47.50	per m²	0.74	£	34.91	per m²	£	286
Ground	Internal Storage	8.30	m²	£	47.50	per m²	0.50	£	23.75	per m²	£	197
First	Dance Floor	158.10	m²	£	47.50	per m²	1.05	£	49.88	per m²	£	7,885
First	Lounge	60.80	m²	£	47.50	per m²	1.00	£	47.50	per m²	£	2,888
First	Bar	75.30	m²	£	47.50	per m²	1.00	£	47.50	per m²	£	3,577
Second	Lounge	67.90	m²	£	47.50	per m²	1.05	£	49.88	per m²	£	3,387
Second	Lounge	14.00	m²	£	47.50	per m²	1.05	£	49.88	per m²	£	698
Second	Office	17.70	m²	£	47.50	per m²	0.66	£	31.42	per m²	£	556
Second	Internal Storage	42.20	m²	£	47.50	per m²	0.45	£	21.38	per m²	£	902
Subtotal		**816.10**	**m²**								**£**	**38,409**
Total											**£**	**38,409**
Rateable Value											**£**	**38,250**

28. A 5% uplift has been applied for air conditioning and 5% reduction for layout.

29. Accordingly, the appeal has been allowed in part at £38,250 RV with effect from 1 April 2017.

Order

30. Under the provisions of paragraphs (4) and (9) of Regulation 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Tribunal orders the Valuation Officer to alter the List within two weeks of the date of this order to show a revised Rateable Value of £38,250 with effect from 1 April 2017.

Refund of fees

31. The Appellant is also entitled to a full refund of the fee paid in accordance with regulation 13E (1)(a) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009 (as amended).

Date: 10 December 2020

Appeal number: CHG100060444