

THE VALUATION TRIBUNAL FOR ENGLAND



Non domestic rating appeal; 2017 rating list; pub and premises; fair maintainable trade; use of main space price; comparable properties; Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council 1976; appeal allowed.

Re: Mojo 19 Back Bridge Street, Manchester M3 2PB

APPEAL NO: CHG100065329

BETWEEN	Voodoo Doll Ltd	Appellant
	and	
	Mr R Roberts	Respondent
	(Valuation Officer)	

BEFORE: Mr SP Wood (Senior Member)

Prof I Solanke

CLERK: Miss F Willson

REMOTE HEARING: 30 October 2020

APPEARANCES: Mr A Brooke of Dunlop Heywood on behalf of the Appellant
Mr G Dodd representing the Valuation Officer

Summary of decision

1. Appeal allowed. The panel reduced the rateable value of the subject property to £44,750 with effect from 1 April 2017.

Introduction

2. This was a 2017 rating list appeal made following the Valuation Officer's Challenge Case Decision Notice completed on 19 June 2020 in respect of the subject property.
3. The property had been entered in the 2017 rating list at £168,000 rateable value as public house and premises.

4. The present valuation of £168,000 rateable value is based upon a 'fair maintainable trade' (FMT) for the premises in accordance with the Rating Lists 2017 Valuation of Public Houses Approved Guide (the Approved Guide).
5. Mr Brooke 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 Brooke's declaration of truth included a statement 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 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.
7. 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.
8. The subject property comprises a licensed bar and nightclub close to the centre of Manchester of 354.4m² comprising of a first to third floor. The property only has an entrance and a store on the ground floor. There is a dance floor and kitchen on the first floor, a further dance floor and store on the second floor and third floor offices. On the ground floor are two other hereditaments being Crazy Pedros which serves a comparable menu to the subject property and the Liars Club which is a cocktail bar.
9. 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 the panel when coming to its decision. Consequently, the absence of a reference to any statement, or evidence, should not be construed as it having been overlooked.

Issues

10. The issues in dispute are the method of valuation to be adopted in valuing the subject property and the resulting rateable valuation (RV).

Evidence and submissions

11. Mr Brooke submitted a bundle of evidence which included details of the subject property, the issues in dispute, details of comparable properties, a calculation of his proposed RV and extracts from the legislation and relevant case law.
12. With reference to his analysis of the subject rent Mr Brooke asked the panel to confirm a revised rateable value of £44,750 based upon a main space price (ITMS) of £160/m².
13. Mr Dodd submitted a bundle of evidence which included the Challenge application and decision.

14. In consideration of the fair maintainable trade (FMT) for the premises in accordance with the Approved Guide Mr Dodd asked the tribunal to confirm the RV of £168,000 with effect from 1 April 2017.

Decision and reasons

15. Mr Brook submitted that the subject property 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 to the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015, the antecedent valuation date (AVD).
16. Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 for this appeal.
17. The panel had regard to the Lands Tribunal judgment of *Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council 1976*, 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 1976 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 Valuation Officer. 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.'
18. Mr Brook submitted that having regard to the *Lotus* decision the best evidence for determining the RV on the subject property was the passing rent on that property. The RV should be equal to the rent at which it is estimated the property might reasonably be expected to let from year to year on the assumption that the tenant undertakes to pay all taxes and bear the cost of repairs and insurance.
19. The property was let on a leasehold basis for a period of 25 years from 5 August 2005 with rent review clauses at five yearly intervals. The rent was reviewed on 5 August 2010 at £44,500 and again on 5 August 2015 at £53,400 the second being four months after the AVD. The rent on the AVD was therefore £44,500 but was £53,400 from the rent review four months later and so supports an RV of between £44,500 and £53,400. The rent of £53,400 was analysed to a base rate of £150.84/m².

20. Mr Dodd submitted that as the subject property is a public house and premises, and it should therefore be valued on the basis of FMT and the application of the Approved Guide which was an agreed methodology between the Pubs Rating Forum and the Valuation Office Agency. The Approved Guide indicates the following:

‘The FMT adopted should represent the annual trade considered to be maintainable at the Antecedent Valuation Date (AVD), 1 April 2015, having regard to the physical nature of the property and its location as at 1 April 2017 when the new rating lists come into force (or subsequently following a material change of circumstances) on the assumption that the enterprise will be carried out by a “reasonably efficient operator” (REO) responding to normal trading practices and competition in the locality. It should be recognised that the actual trade at AVD may not in all cases be the best evidence of what is a reliable and sustainable level of FMT.’

21. Mr Dodd submitted that the subject property was a bar and the reference in the lease to ‘licensed bar, restaurant and nightclub’ merely set out the permitted use of the premises and did not set the description applied to the property. The agreed method of calculating the RV on a licensed property was to use the actual trading figures and the methodology contained in the Approved Guide. The subject property had trading figures as follows:

Year ending	31/12/12	31/12/13	31/12/14	31/12/15
Wet	£1,380,739	£1,199,067	£1,447,100	£1,510,308
Dry				£2,053
Total				£1,512,361

22. Mr Dodd then reduced the trading figures by 12% in line with the Approved Guide giving a valuation of RV £168,000. He maintained that the RV was not unusually high as twenty three similar properties in the M1, M2 and M3 postcodes had an RV of around £150,000.
23. He further drew the panel’s attention to the fact that the lease, although it contained nothing unusual did, in his opinion, set a very low rent. The subject property had a turnover of £1.4m but the rent for the property was only £53,400. He did not believe that this was a reasonable rent for the property and submitted that a reasonable landlord would require a larger rent for a property trading at £1.4m per annum
24. The panel acknowledged that the subject property traded at £1.4m but as both parties agreed that the lease did not contain anything unusual it put weight on the rent contained in it. The rent was that determined on a rent review only four months after the AVD. The panel did not agree that this was too low a rental figure to be used.
25. It was aware that in accordance with *Lotus v Delta*, the subject rent was the starting point. In order to be used it needed to be as close to the AVD as possible and be either a new rent or if that is not possible then a rent review. Therefore, the panel found the passing rent on the subject property to be persuasive evidence as the rent was set on a rent review only four months after the AVD.
26. Mr Brook argued that the terms of the lease, were the normal terms for a lease on similar types of property and so would not require adjustment to fit within the statutory definition for RV. The rent could therefore be used to set a base price for ITMS. He submitted that the

Approved Guide was only intended to be used where a rental information was not available. He further submitted that the FMT was an inferior method of valuing to using the rental on the subject property where this was available.

27. He further submitted that in order to satisfy the statutory definition the property should be valued as if vacant and to let and only valued in accordance using the Approved Guide if there were no alternative. The Approved Guide was mainly used to value pubs, not nightclubs as in the case of the subject property.
28. Mr Dodd argued that the Approved Guide was not a method of last resort and was not confined to be used to value a pub but could be applied to any licensed premises. In his opinion using the Approved Guide gave an RV which more closely reflected the trade figures for the property which would be what a tenant coming new to the property would base his bid on with a licensed property.
29. The panel upheld Mr Brooks contention that weight should be attached to the subject rent to arrive at an ITMS to set the RV as the property was not a pub but a nightclub.
30. Mr Brooks drew the panel's attention to the fact that in the 2010 rating list the subject property was valued using an ITMS base value of £275/m² and so the valuation officer had determined that the best method of valuation for this property in the 2010 list was the price ITMS.
31. While the panel appreciated that the revaluation process was to look at all properties afresh, it could not ignore the fact that the valuation officer had accepted and used a price per square metre basis in the 2010 list. The valuation officer had then changed to using the FMT basis in the 2017 list without there being any explanation given for that change.
32. In addition to the subject rent, Mr Brook submitted that the two properties on the ground floor of the subject property being Crazy Pedros and The Liars Club were both valued on a price per square metre basis.
33. Mr Brooks referred the panel to 19a The Liars Club which has an RV with a base price of £160/m² in the 2017 list. Although it was situated in a basement it was, in his opinion, the most comparable property.
34. The panel was aware that after considering the rent passing on the subject property the other evidence to be considered as part of the basket of evidence is that of a comparable property. The Liars Club was the same type of property. It was also in exactly the same location as the subject property and so the base rate of £160/m² added to the basket of evidence which supported the appellants revised RV.
35. Mr Brook provided the panel with a revised RV based on the base price of £160/m² being the tone set:

Floor	Description	Area m ² /unit	Price per m ² /unit	Value	Factor
Ground	Beer cellar/spirits store	13.38	£35.56	£476	0.222
First	Bar/dance/seating area	118.92	£160	£19,027	1
First	Kitchen	17.71	£112	£1,984	0.7
Second	Bar/dance/seating area	49.7	£160	£7,952	1
Second	Storage	16.27	£72	£1,171	1
Third	Offices	126.46	£112	£14,164	0.7
			Total	£44,773	
			RV	£44,750	

36. In conclusion, the panel considered Mr Brooks approach using the rent passing on the subject property and the tone on the comparable property of £160/m² followed the approach taken in the *Lotus* judgment. The valuation officer had not provided the details of any comparable properties to support any alternative valuation on the price per square metre basis. The panel accepted that the Approved Guide was intended for the valuation of pubs not nightclubs. It had not been used in valuing either of the two similar premises in the same building or to value the subject property for the 2010 list.
37. In the appeal before it, the panel held that it had been provided with sufficient evidence to demonstrate that the rateable value was excessive. It therefore found in favour of Mr Brooks and set the RV at £44,750 with effect from 1 April 2017.

Order

38. As a consequence of the above decision, the Valuation Officer is ordered to reduce the 2017 Rating List entry to £44,750 with effect from 1 April 2017 within two weeks of the date of this order. The ratepayer is also entitled to a refund in full of the appeal fee paid in accordance with regulation 13E (1)(a) of the Non Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009.

Date: 24 November 2020

Appeal number: CHG100065329