VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; Club and Premises; accuracy of rateable value in list; rental and comparable evidence considered; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141. Decision: Appeal allowed in part.

RE: SR44 at 44-48 Scotswood Road, Newcastle Upon Tyne, NE4 7JD

APPEAL NUMBER: CHG100066020

BETWEEN:	Molly House Ltd	Appellant
and	Valuation Officer	Respondent

BEFORE: Mr W Read (Senior Member sitting alone)

CLERK: Mr D Jefferies

REMOTE
HEARING ON: 30 October 2020

APPEARANCES: Mr G Herron of Altus Group for the appellant
Mr M Grayson for the Valuation Officer

Summary of decision

1. The appeal was allowed in part. The rateable value (RV) of SR44 at 44-48 Scotswood Road, Newcastle Upon Tyne, NE4 7JD, was reduced to £37,750, with effect from 1 April 2017.

Introduction

2. In accordance with the Tribunal's business arrangements, I have been authorised to consider and determine this appeal alone.

3. 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.

4. 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.

5. The appeal before me was a 2017 Rating List appeal. The Rateable Value (RV) of the appeal hereditament was originally £45,250 from 1 April 2017, with a description of Club and Premises. This was a compiled list appeal, so the material day was also 1 April 2017. At the challenge stage the Valuation Office Agency (VOA) reduced the RV to £39,250 and altered the rating list with effect from 1 April 2017. The appeal was made on 16 March 2020 against the Valuation Officer's (VO) Decision Notice of 21 November 2019 in respect of the appeal property and the RV of £39,250. The VO's decision was to treat the appellant's proposal as not well founded and the entry of £39,250 RV was deemed as correct. The proposed RV sought by the appellant was £35,000.

6. The subject property comprises a two storey mid-terrace building. The building was previously a commercial garage and has been converted to a nightclub and premises with the bar and dance floor to the ground floor and customer WCs and internal storage to the first floor. Scotswood Road lies to the western edge of Newcastle city centre, accessed off St James Boulevard and in close proximity to the Redheugh Bridge. The property has been assessed at a base value of £130 per m^2.

7. This document is not intended as a verbatim report of the proceedings nor is it proposed to reproduce in full all of the parties' evidence. The absence in this decision of a reference to any statement or item of evidence placed before me by the parties should not be construed as an indication that that statement or item of evidence has been overlooked.

Issue

8. The issue between the parties concerned the RV of the appeal property and, specifically, the rate per m² that should apply. Mr Herron, for the appellant, sought a reduction to £35,000 RV based on £120 per m². Mr Grayson, for the VO, defended the existing RV of £39,250, which was based on £130 per m² and sought dismissal of the appeal.

9. All relevant factual information was not disputed by the parties.

Decision and reasons

10. Mr Herron contended that the main issue in dispute was the main space value. He said that the property has been held by his client by way of a 12-year term from 18 November 2004 on FRI terms and subject to 3 years reviews and tenant's break at 5 yearly intervals. The rent is £35,000 per annum which has remained as the passing rent. The lease expired in November 2016 and the tenant has continued to hold over since then. Mr Herron said the property is also restricted by several planning conditions due to its proximity to residential property, details of which were provided to me within the appeal paperwork and at the hearing. Mr Herron believed

that the rental evidence in respect of the subject property provides the best evidence in respect of the assessment.

11. Mr Grayson explained to me that the subject property was originally used for industrial purposes but was then subsequently altered to form a nightclub and premises. He understood this alteration took place from around October 2011. Prior to this, it was his understanding that the property had remained in a semi-derelict state and, in fact, it was removed from both the 2000 and 2005 rating lists as it was deemed incapable of beneficial occupation. He understood that the main evidence being put forward by the appellant's representative was the actual rent of the property. A copy of the lease had been requested and supplied by the appellant. He said that the current lease expired in 2016. The original lease was for 12 years from November 2004. Mr Grayson highlighted to me a number issues regarding this lease and submitted that the passing rent was an unreliable indicator of value. In particular, that the original lease was agreed in 2004, some 11 years prior to the AVD of 1 April 2015.

12. I accepted that the rent passing on the appeal property was the appropriate starting point, in accordance with the propositions for weighing evidence established in the Lands Tribunal decision in *Lotus and Delta v Culverwell (VO)* [1976] RA 141. The RV represents the rent that the premises would have likely achieved on the open market at the AVD of 1 April 2015. *Lotus and Delta* also established that assessments of comparable properties were relevant and that an opinion of the value of the appeal property should be reached in the light of all of the evidence, weighed appropriately. I heard what both parties have had to say regarding the subject property's rent, which was agreed at £35,000 with effect from November 2004. I noted, however, that at that time the property was not actually included within the rating list as it had been deemed incapable of beneficial occupation. In this case I accepted the VO's contention that it was unclear what the £35,000 originally agreed was based upon. The property appears to have been converted into a nightclub in 2011, when it was brought into the rating list. Given that the rent was agreed in 2004, and having regard to the uncertainties surrounding the lease, I therefore placed little weight on the passing rent.

13. Both parties sought reference to comparable assessments in support of their respective cases. Mr Herron put forward Boulevard Cabaret Bar, a nightclub venue which is located very close to the subject property off Scotswood Road but having prominence from St James Boulevard dual carriageway. This property has been assessed at a main space price of £125 per m^2. He felt that Boulevard was a more prominent building and better located than the subject property. Mr Grayson, on the other hand, accepted that Boulevard is in close proximity to the subject property but although Boulevard is currently in the list described as a Club and Premises it is operated as performance arts theatre and thus not directly comparable. Mr Grayson provided me with the details of two other comparable nightclubs in Newcastle, i.e. Bliss and World HQ, both of which have been valued at £145 per m^2. He submitted that based upon the comparable evidence, the main space value ascribed to the subject property of £130 per m^2 appears reasonable and reflects the disadvantages of Boulevard and places the property below that of his comparable properties Bliss and World HQ.

14. In reaching my decision, I noted that Boulevard is not a typical nightclub operation. It is only open to ticket sales which are bought in advance. It is laid out, and is similar in nature, to a theatre with a box office within the building. However, this property is in the same valuation scheme as the subject property but appears to have been valued by way of a hybrid approach by the VOA. It was accepted by the parties that the location of the subject property is best described as being "off-pitch". Mr Grayson had provided me with two other comparable properties, Bliss and World HQ. These properties were also described as being "off-pitch". I did not find any of the comparable properties cited by the parties to be compelling. Bliss and World

HQ are more traditional type nightclub venues but situated on the opposite side of Newcastle, about a mile and half from the subject property.

15. Having considered all of the evidence, I found that it was inappropriate to rely only on the rent of the appeal property for the reasons already given. I had regard to the comparable evidence provided by the VO of Bliss and World HQ. However, as these nightclubs are situated on the opposite side of Newcastle, in a completely different location, I accepted Mr Herron's contention given their location and therefore placed less weight on them as evidence. The only other comparable presented was that of Boulevard provided by the appellant's representative. Boulevard is described by the VO as a "hybrid type" premises but valued within the same valuation scheme as the subject and also described as a nightclub and premises. Boulevard has been valued at a main space rate of £125 per m^2. I placed more weight on this property mainly due to its close proximity to the subject property. I had regard to the variances between Boulevard and the subject, but I nevertheless determined that the subject property should also be valued at the same rate of £125 per m^2.

16. In conclusion, I found that it was correct that the appeal property should be assessed at the same rate per m^2 as Boulevard Cabaret Bar. On this basis I was satisfied that a rate of £130 per m^2 adopted for the subject property was too high and I have taken the view that the appropriate value, which reflects its age, quality and situation, would be at a base rate of £125 per m^2. Mr Herron had provided me with two valuations, one being with an adjustment for disproportionate first floor storage and one as per the existing relativities. I determined that it was appropriate to use the existing relativities in this case. This yields a RV of £37,755, rounded down to £37,750, which I direct with effect from 1 April 2017. The appeal is allowed that that extent.

Order

17. Under the provisions of Regulation 38 (4) and (9) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 the VTE orders the Valuation Officer to alter the List within two weeks of the date of this order to show SR44 at 44-48 Scotswood Road, Newcastle Upon Tyne, NE4 7JD, at a Rateable Value of £37,750 with effect from 1 April 2017.

18. Any fee paid will be refunded in full in accordance with regulation 13E.

Date: 13 November 2020

Appeal number: CHG100066020