THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; Rental evidence; Unadjusted base rate; Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141; *Appeal dismissed.*

RE: Costa Coffee, Galleon Boulevard, Dartfordshire DA2 6QE

APPEAL NUMBER: CHG100076780

BETWEEN: Goldex Investments Limited T/A Costa Coffee (represented by Altus Group) — Appellant

And

Andrew Corkish (Valuation Officer) — Respondent

PANEL: Mr S P Wood (Senior Member)
Mr M Bhatti

CLERK: Ms S Hodgson

ON: 14 May 2021

APPEARANCES: Mr S Campbell of Altus Group for the appellant
Mr R Das of the Valuation Office Agency for the respondent

REMOTE HEARING

Summary of decision

1. Appeal dismissed. The existing valuation is not excessive and the entry in the rating list is confirmed at £23,750 rateable value (RV) with effect from 1 April 2018.

Introduction

2. This was a 2017 rating list appeal. The RV of the appeal hereditament was £23,750 with effect from 1 April 2018. The challenge stage was completed on 27 October 2020. The original RV of the appeal hereditament was £29,000. This was reduced to £23,750 following the check stage.

3. The appeal hereditament was a timer clad standalone Café and Premises that measured 97.29m^2 and was located on the Crossways Business Park near the Dartford Crossing.

4. 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.

5. 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.

6. 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 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

7. The issue for the panel to consider was the correct RV to be ascribed to the assessment.

Evidence and submissions

8. Mr Campbell 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 Campbell declared that he was instructed under a conditional fee arrangement.

9. Mr Campbell 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.

10. The panel 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. The panel therefore considered the “expert” evidence and attached such weight to it as it saw fit.

12. Mr Campbell did not place any weight on the rent of the subject property. He argued that as it was an upward only rent review for 2016 reflecting an amount agreed in 2011, it could not be regarded as an open market rent in 2016. He considered the best comparable evidence to be the only other café and premises located on the business park, Lakeside Café. Mr Campbell contended that the subject property had been valued at the same rate as the Lakeside Café in the 2010 list and should be valued similarly in the 2017 list. Mr Campbell advised the panel that the Form of Return (FOR) that had been completed in 2007 was incorrect and asked the panel to reduce the RV to £11,500 by way of an unadjusted base rate of £120 per square metre (psm).

13. Mr Das for the respondent argued that the rent was agreed as part of a rent review at £37,000 with effect from 1 May 2016. Mr Das contended that the Lakeside Café was not comparable to the subject property due to its location in the business park. He advised the panel that the subject property was located at the entrance to the business park just off the main roundabout from the Dartford Crossing and could be seen from the main road. Mr Das stated there is a mini-mart next door to the subject property that is also valued at £245psm, and while the rent is from 2018, there have been no appeals on that property. Mr Das considered that there are no comparable properties for the subject property and asked the panel to dismiss the appeal and confirm the RV at £23,750 in the 2017 rating list.

Decision and reasons

14. Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999, provides that:

> *2(1) The rateable value of a non-domestic hereditament none of which consists of domestic property and none of which is exempt from local non-domestic rating shall be taken to be an amount equal to the rent at which it is estimated the hereditament might reasonably be expected to let from year to year on these three assumptions –*
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> *(a) the first assumption is that the tenancy begins on the day by reference to which the determination is to be made;*
>
> *(b) 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;*
>
> *(c) the third assumption is that the tenant undertakes to pay all 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.

15. In respect of an appeal against an entry in the 2017 rating list, the rental levels are to be taken as those passing at the antecedent valuation date (AVD) of 1 April 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No.2841).

16. Both parties had referred to the leading judgment of *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141, which set out six propositions to be followed when considering the weighting of evidence:

    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 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 differing types of evidence depending on the one hand 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.

17. The appeal property was subject to a rent review with a passing rent of £37,000 for a term of 10 years with effect from 1 May 2016. The landlord was responsible for external repairs and Mr Das analysed the rent to £35,150 which devalued to £361.29psm. Mr Campbell did not make an analysis of the rent as he did not consider it carried any weight.

18. The panel heard from Mr Campbell that the rent for 2016 was agreed in 2011 and provided a copy of the original 2011 lease that had a clause for the review date and rental figure. The panel had sight of the evidence, however it noted that the parties were in agreement of the amount of rent to be paid from the review date.

19. Mr Campbell argued that the lease was part of special purchaser agreement as the appellant owned the land next door to the subject property and was currently redeveloping it to make its headquarters. He stated that in 2011 when the rent review for 2016 was agreed, this was known and therefore a higher rent was agreed to secure the property.

20. The panel accepted the contention from Mr Campbell that the lease may have been agreed to secure the land due to the appellant redeveloping the next door site, however it was of the opinion that the value of the subject property for rating purposes has been taken into account as the current RV is substantially less than the passing rent from 2016.

21. The panel considered the location of the subject property and was of the opinion that it was in a desirable location on the busines park as it could be seen from the main road and was just off the roundabout from the Dartford Crossing, therefore it was able to attract passing trade from customers travelling in all directions.

22. The panel did not consider the Crossways Mini Store to be comparable to the subject property. This was because it was in a different mode or category of occupation; in other words it was not a café and attracted a different clientele. The Mini Store was much smaller than the appeal property and was valued as a Kiosk and Premises and therefore the panel placed little weight on this evidence.

23. The Lakeside Café was 71.92m^2, of which 34.31m^2 was an outdoor seating area. It was located in the main business park and was accessible by driving through the office parking area and then on foot. As the name suggests, it was next to the lake in the business park.

24. It was the panel's view that the Lakeside Café was in a less desirable location of the business park to attract passing traffic as it was further from the main arterial routes and intersections. The panel also noted that only 35.98m^2 of the Lakeside Café was valued at £120psm due to the outside seating area. The panel was not persuaded that the Lakeside Café was comparable to the subject property as it appeared to be of a different character and, while comparatively close, it was in a different type of location.

25. The panel was not provided with any evidence to show that the FOR had been incorrectly completed in 2007, and no further FOR had been submitted since then, therefore the panel placed appropriate weight on this argument.

26. The panel was of the mind that the subject property would appeal to a different tenant than the Crossways Mini Store and the Lakeside Café and was persuaded that this had been taken into account in the current valuation.

27. The panel held that the current entry in the 2017 list for the subject property was not unreasonable and therefore, the appeal was dismissed and the current RV of £23,750 was confirmed.

Date: 10 June 2021

Appeal number: CHG100076780