THE VALUATION TRIBUNAL FOR ENGLAND

Non-Domestic Rating; 2017 Rating List; Restaurant and premises; Price per square metre; Rental evidence/assessment of comparable properties; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal dismissed.

Re: 7 Fleet Street, Preston, PR1 2UT

APPEAL NUMBER: CHG100076893

BETWEEN:	Kaspa's North West Limited	Appellant
	and	
	Mr R Roberts (Valuation Officer)	Respondent

PANEL: Miss M Dowrick (Senior Member)
Miss E Blois

CLERK: Miss K Hendry IRRV (Tech)

APPEARANCES: Mr A Fowke of Altus Group (expert witness on behalf of the appellant)
Mrs D Reddihough on behalf of the Valuation Officer

REMOTE HEARING on Tuesday 10 November 2020

Summary of decision

1. Appeal dismissed. The panel confirmed the rateable value of £37,250 with effect from 13 October 2017.

Introduction

2. This appeal has been brought in respect of the following: 7 Fleet Street, Preston, PR1 2UT which was entered in the 2017 rating list as "restaurant and premises" at rateable value £37,250 effective from 13 October 2017.

3. The appellant's challenge proposal to the Valuation Officer was made on 22 February 2019. The Valuation Officer issued a challenge decision on 24 March 2020, which stated that the rating list entry was considered to be reasonable, and therefore there would be no amendment made. The appellant's appeal to the Valuation Tribunal for England (VTE) was received on 15 April 2020, and made on the grounds that the Rateable Value is excessive.

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

7. Mr Fowke'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.

8. 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).

9. The panel therefore considered the "expert" evidence and attached such weight to it as it saw fit.

10. 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

11. The issue for the panel to determine was the correct rateable value to be attributed to the appeal property in the 2017 Rating List.

Evidence and submissions

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

13. Mr Fowke was seeking a revised rateable value of £34,250 and relied on the following evidence:

    a. In Mr Fowkes opinion, the rent on the appeal property was a good indication that the unadjusted rate of £110/m^2 is too high. In his opinion the unadjusted rate should be reduced to £100/m^2.

b. The lease was agreed with effect from 24 June 2017 for a term of ten years with a rent review after five years. There was 18 months rent free given at the start of the term. Analysing the rent it produced a revised rate of £82.91/m^2, taking into account the rent free period. If you analyse over the full ten years, it produces a rate of £101.53/m^2.

c. The best comparable property to the appeal property is 120 Corporation Street. It is in the same scheme as the appeal property but has been valued at £100/m^2. It is in a similar location to the appeal property but more favourable as it is on the same side of the A59 dual carriageway as Poundstretcher, ALDI, Staples and Hill Street Car Park.

d. The appeal property is situated at the side of the A59 dual carriage way, at the very large and busy junction with Corporation Street, it is out of the way so is not ideal for pedestrians / footfall. The appeal property is currently the only occupied retail unit in this small parade. The parade has remained vacant since completion pre September 2014.

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

a. Forms of return were issued to the appellant in August 2018 and November 2019 and have not been returned, therefore rental information cannot be confirmed. The rent is effective from 24 June 2017 and is therefore two years post the antecedent valuation date (AVD).

b. Mr Fowke has analysed the rent by adjusting for the full 18 months' rent free whereas it is standard VOA policy to assume the first three months is related to landlords contribution to fit out. It is accepted that the appeal property has had a substantial fit out, and it may be appropriate to adjust for a longer period of rent free than three months. Assuming 12 months rent free period, changes the analysis to £94.50psm. However, as no details have been provided of the rent, no weight should be attached to this evidence above other rents. In order to arrive at a tone for the locality, the VO has considered a basket of rents which support the tone for the building.

c. The appeal property is one of the lower valued restaurants in Preston city centre, due to its off pitch location. The range of values for Preston city centre range from £120/m^2 to £175/m^2. The appeal property enjoys a good visible location adjacent to the ring road and is on the edge of one of the main licensed areas of the city. It enjoys a better location and being new build, is a superior property to those that have been valued at £120/m^2.

d. The appeal property is situated beneath a Premier Inn and not too far away from a Wetherspoons pub which is considered to be a prime location for a restaurant. It is situated on the main drag between the city centre and the University. Whilst it may be a slight effort to get to the appeal property, the same can be said for the comparable properties put forward. However, given the position, it enjoys good footfall.

e. The Corn Exchange, PR1 is situated within 75m and enjoys an identical pitch. This is a landmark building valued at £125/m^2 and the assessment was confirmed to be correct by a Valuation Tribunal decision. Both hereditaments enjoy prominence to the main road and have a good quality fit out and are within the same pitch of the city centre.

f. Mrs Reddihough described 120 Corporation Street as a more dated building in a ‘dead zone’ which is further out of the city compared to the appeal property which is why it has been valued at £100/m^2. The types of shops opposite this comparable property are small newsagents, a pizza shop and a funeral parlour.

Decision and reasons

15. After due consideration of all of the evidence submitted by the parties, the panel determined that the appeal should be dismissed.

16. In deciding this appeal the panel 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

17. 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 13 October 2017.

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

19. The panel found authoritative guidance in the Lands Tribunal’s judgment in *Lotus and Delta Ltd v Culverwell (VO) & Leicester City Council* (1976) RA 141, 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. With this in mind, the panel was informed that rent was agreed on 24 June 2017 for a term of 10 years with a rent review after 5 years. An 18 months rent free period was given at the start of the term. However, those details could not be confirmed by the Valuation Officer as no Form of Return had been returned by the appellant despite two requests asking for this information. The panel held that the rent carried very little weight as it was after the AVD of 1 April 2015.

20. The panel was referred to further rental evidence of restaurants in the locality which ranged from £118.40/m^2 to £262.40/m^2 in comparison with the appellant's rent of £95/m^2. The rent provided by the appellant did not appear to follow the tone of rents provided by the Valuation Officer. Therefore the panel turned to comparable properties to determine whether the adopted rate on the appeal property was excessive.

21. In respect of 120 Corporation Street, the panel found that the adopted rate of £100/m^2 was fair for this property, as it was further from the town centre, in what was described as a 'dead spot' which was not aesthetically attractive. In comparison to 120 Corporation Street, the appeal property enjoyed a much better location, similar to that of The Corn Exchange, PR1.

22. The panel had regard to the location of the appeal property. Whilst it was slightly on the fringe of the city centre, it was found to be on the main route from the University and the city centre and would have good passing trade from Wetherspoons. Given that The Corn Exchange was valued at £125m^2, the panel considered that the current value of £110m^2 was not excessive.

23. Accordingly, the appeal has been dismissed.

Date: 17 November 2020

Appeal number: CHG100076893