THE VALUATION TRIBUNAL FOR ENGLAND

Summary of Decision: non-domestic rates; 2017 rating list appeal; kiosk and premises; Lotus & Delta Ltd v Culverwell (VO) and Leicester City Council [1976]; rent passing on the appeal property as at the antecedent valuation date; appeal dismissed as it was found that the evidence presented showed that the existing valuation was reasonable.

Re: Costa Coffee at DLR Station, London City Airport, King George V Dock, London E16 2PX

APPEAL NO: CHG100079824

BETWEEN:	Goldex Investments (Essex) Ltd	Appellant
	and	
	Mr A Ricketts (Valuation Officer)	Respondent

BEFORE: Mr A Khurram (Senior Member)

CLERK: Mrs R James IRRV (Hons)

REMOTE HEARING 4 ON: Tuesday 12 January 2021

APPEARANCES: Mr M Morrison of Altus Group (on behalf of the Appellant)
Mr C Coates (Respondent's representative)

Summary of decision

1. The appeal was dismissed and the appeal property's assessment remained unaltered at £31,000 Rateable Value (RV), with effect from 1 April 2017.

Introduction

2. This appeal has been brought in respect of the following: Costa Coffee at DLR Station, London City Airport, King George V Dock, London E16 2PX, which was entered in the 2017 Rating List as kiosk and premises at £31,000 RV, effective from 1 April 2017.

3. The appellant's Challenge to the Valuation Officer (VO) was made on 11 March 2019. The appeal to this Tribunal was made on 6 October 2020, following the VO's Decision Notice of 8 July 2020, in respect of the appeal property (hereditament). This is a compiled list appeal so the material day is 1 April 2017.

4. The appeal hereditament comprises a kiosk and premises, that was operated by Costa Coffee. The premises were located within London City Airport, in the London Borough of Newham. The valuation of £31,000 RV was based on an unadjusted main space rate of £420/m^2.

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. As permitted within the Tribunal's Business Arrangements, due to unforeseen circumstances, I heard this appeal alone.

8. Mr Morrison was appearing on behalf of the appellant as both advocate and expert witness. Therefore, it was important to ascertain if there was a success related fee involved and if so whether its existence was compatible with his obligations to the tribunal as an expert. This question was raised in view of the Upper Tribunal's judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC).

9. Mr Morrison explained that Altus Group was representing the appellant in this appeal on a contingency fee basis. However, he declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and he will comply with this as well as the requirements of his professional body regardless of whether or not the evidence supports his client's case.

10. I have accepted this expert witness evidence on the above basis as the appeal is not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure regulations and is 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). I therefore considered the "expert" evidence and attached such weight to it as I saw fit.

11. On 1 December 2020, Mr Morrison submitted additional evidence to that provided at the Challenge stage. The additional evidence was an agreement reached in respect of Unit CR24 at Level Minus One, Retail Mall 1, Crossrail Place, London E14 5AR. The reason for the late submission was due to the fact that the agreement had only been reached that day. Furthermore, on 8 January 2021, Mr Morrison emailed both the Tribunal Office and the Valuation Officer to explain that he wished to revise the assessment he sought from £23,000 RV to £25,000 RV. At the hearing, Mr Cates explained that he had no objections to the additional evidence or Mr Morrison revising his proposed assessment for the appeal property; however, he would be questioning him on the reasons for the proposed amended assessment during the hearing. As the VO had no objections to the additional evidence and

the revised assessment sought, I proceeded to hear the appeal allowing all the evidence to be presented.

12. 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 myself when coming to a decision. Consequently, the absence of a reference to any statement, or item of evidence, should not be construed as it having been overlooked.

Issue

13. Whether the appeal property's current assessment at £31,000 RV was reasonable?

Evidence and submissions

14. In a statement which accompanied the Challenge, together with his oral presentation at the hearing, Mr Morrison gave several reasons as to why he believed that the 2017 assessment was incorrect and excessive, which included:

   i) The current assessment at £31,000 RV did not represent the rental value of the hereditament under the rating hypothesis as at the antecedent valuation date (AVD) of 1 April 2015 and reflecting the physical factors of the property and its locality as at the material date of 1 April 2017.

   ii) The appeal property had a passing rent of £25,000 per annum. The lease had been agreed on 29 September 2016 and included a two months' rent-free period. The lease was for ten years, with an upward only rent review after five years. Amortising the rent-free period over the first five years gave an effective starting rent of £24,167 per annum.

   iii) In his Challenge, Mr Morrison had taken the 2016 rent and considering an increase in value of 5% between the AVD and the lease start date (based on increased passenger numbers), he proposed an unadjusted main space rate of £310/m^2, which would result in an assessment of £23,000 RV. In support of his proposed reduction, Mr Morrison had provided a schedule detailing the percentage increase in passenger numbers and flights from 2014 through to 2016.

   iv) However, at the hearing, Mr Morrison sought a revised assessment of £25,000 RV based on an unadopted main space rate of £340/m^2, which was in line with the rent passing on the appeal property as at the AVD. He added that whilst there was a turnover top-up element within the appeal property's lease, prior to the AVD the level of turnover taken had not reached the sufficient level as to trigger the top-up element and the rent paid had been £25,000 per annum.

   v) He referred to his comparable property Unit CR24 at Level Minus One, Retail Mall 1, Crossrail Place, London. An agreement had been reached in respect of this property in December 2020, when the top-up element had been disregarded.

   vi) In support of a reduced unadjusted main space rate of £340/m^2, Mr Morrison drew the panel's attention to the Valuation Officer's rental summary. In particular, the rent passing on Costcutters, Units 1-3 West Ham Underground, which analysed to £246.26/m^2 and Units 2 & 3 Gnd Flr The West Building at Newham Dockside, which analysed to £312.02/m^2.

vii) To summarise, Mr Morrison sought a reduction to £25,000 RV, which was based on an unadjusted main space rate of £340/m^2.

15. In the VO's Challenge case decision notice, it was stated that having considered the issues raised in the Challenge, the VO disagreed with the proposed list alteration. The statutory definition of rateable value was referred to. Furthermore, in oral presentation at the hearing and within the decision notice, it was also explained that:

i) The representative had not provided any rental evidence other than the subject rent. However, the VO considered it necessary to consider the basket of rents that had been set on comparable properties close to the AVD. As such, he had provided a rental schedule which detailed reliable and consistent rents, which supported the current unadjusted main space rate applied to the appeal property of £420/m^2.

ii) The representative submitted a Check on this assessment that sought a reduction in the unadjusted main space rate to £340/m^2; this had been calculated by simply dividing the rent of £25,000 by the main space area of the premises. Similarly, in the Challenge, the representative had not shown valid analysis of how he had arrived at a figure of £310/m^2. The VO questioned what new evidence had Mr Morrison had regard to when reverting his proposed assessment back to £25,000 RV.

iii) The 2010 Rating List assessment for the appeal property had been challenged on the basis that the tone adopted of £475/m^2 was too high. The VO at the time referred to the assessment of Café at Bus Station, Great Eastern Road, London, which had a rent that analysed to £420/m^2. This property had been let two months prior to the AVD, so was good evidence in accordance with the six propositions outlined in *Lotus and Delta v Culverwell (VO) & Leicester City Council* [1976] RA 141. The 2010 Rating List assessment was settled at £420/m^2.

iv) When considering the appeal property's 2010 Rating List assessment, the assessments placed on three other comparable kiosks had also been considered, which had all been valued at a main space rate of £310/m^2. It had been agreed that this value was too low for the appeal property. For the 2017 Rating List, those three comparable kiosks had been valued at £550/m^2 and £750/m^2, which indicated that the rental values of kiosks had increased considerably between the two rating lists.

v) After reviewing the lease, the VO noted that it was a 'turnover rent lease', which the representative had failed to mention in the Challenge. Whilst there was a base rent of £25,000 per annum, there was a turnover agreement of 10%. Therefore, if turnover exceed £250,000, then 10% of the turnover became payable instead of £25,000. In the years from 2016, turnover exceed £250,000, so 10% was payable as follows:

29 September 2016 to 28 September 2017 - £27,421;
29 September 2017 to 28 September 2018 - £26,224; and
29 September 2018 to 28 September 2019 - £28,720.

vi) The turnover which the representative was seeking to rely on was from 2014-2015 and 2015-2016, which related to a period of time covered by a lease agreed in 2010.

vii) To summarise, Mr Cates did not consider that the appeal property's rent fell in line with the rating hypothesis. The assessment was at the same level as it had been for the 2010 Rating List and no evidence had been presented to suggest that rental levels had fallen for kiosks between the two lists. Accordingly, he sought dismissal of the appeal.

Decision and reasons

16. The appeal hereditament 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 (AVD). 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. Firstly, I had regard to the Lands Tribunal judgment of *Lotus & Delta*, 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 is 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 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. Bearing these six propositions in mind, I acknowledged that the correct starting point in this appeal was the actual rent passing on the appeal property. The rent of £25,000 per annum had been set by way of a lease that commenced on 21 June 2010 on a six-year term, with three yearly reviews. The landlord was responsible for external repairs and building insurance. The lease was renewed in 2016. The rent had been subject to a nil increase at both the rent review in 2013 and lease renewal in 2016. The VO had analysed the rent of £25,000 per annum to a figure of £342.65/m^2; which Mr Morrison claimed supported his proposed unadjusted main space rate of £340/m^2.

19. Whilst I accept that the analysed rental figure supported Mr Morrison's proposed main space rate, I treated the subject rent with caution. Firstly, several adjustments had to be made to the rent for it to accord with the statutory definition of rateable value. The rent was not on full repairing and insuring terms, with the landlord being responsible for external repairs and building insurance. There was a clause within the lease that the kiosk had to operate as a coffee shop and the lease had been set in 2010, which was five years prior to the AVD. Rent review and lease renewal had taken place in 2013 and 2016, respectively where the rent had remained constant at £25,000 per annum. However, that rental figure was subject to a top-up element should turnover exceed £250,000. If turnover exceeded £250,000, the rent payable was 10% of the takings rather than £25,000.

20. As the rent required a degree of adjustment to bring it in line with the rating hypothesis, I turned to the third proposition from *Lotus & Delta* and examined rents passing on comparable properties. I considered the correct approach in this appeal was to examine the whole basket of evidence before arriving at a reasoned decision. No further rental evidence had been provided by Mr Morrison. However, in support of his proposed main space rate, he had referred to two of the properties detailed in the VO's rental summary.

21. The VO's rental summary, detailed the following five kiosks located within London:

Address	**Area ITMS m^2**	**Date of rent**	**Analysed rent £/m^2**	**Adopted Value**
Costcutters Units 1-3 West Ham Underground Station, Manor Road	72.98	1 Mar 14	£246.46	£350
Kiosk at Royal Victoria DLR Station, Victoria Dock Road	15.99	1 Jan 15	£537.84	£550
Unit 2 & 3 Gnd Flr, The West Building at Newham Dockside	23.46	25 Jun 13	£312.02	£440
Costa Coffee at DLR Station, London City Airport (Appeal Property)	72.96	21 Jun 13	£342.65	£420
Barista Coffee House, Stratford Station	25.93	1 Nov 16	£659.47	£550

22. Mr Morrison had highlighted that the analysed rents for Costcutters at Units 1-3 West Ham Underground Station and Units 2 & 3 Gnd Flr, The West Building, supported his proposed unadjusted main space rate of £340/m^2 for the appeal property. However, this was disputed by Mr Cates, who stated that the locations of the properties were not comparable.

23. From examining the rental schedule, I found the best rental evidence in terms of date set close to the AVD, was the rent passing on Kiosk at Royal Victoria Station. This kiosk had a

rent set just three months prior to the AVD, which analysed to £537.84/m^2. However, this was a substantially smaller unit than the subject property and I was not provided with any specific details in relation to how these properties compared to the subject property in terms of location and footfall. As such, I went on to consider the fourth proposition as set out in *Lotus & Delta*, which examined assessments placed on comparable assessments.

24. Mr Morrison had referred me to a recent agreement reached in respect of Unit CR24 at Level Minus One, Retail Mail 1, Crossrail Place, where the top-up element of the rent had been disregarded. However, I was satisfied that this case sufficiently differed from the appeal property. Unit CR24 was located within a shopping mall, as opposed to the appeal property which was within a unique stand-alone location. Furthermore, the detail of the lease differed, Mr Cates explained that the rent set on Unit CR24 had been 80% of open market value.

25. I heard how the appeal property came into existence during the life of the 2005 Rating List and the proposed assessment of £25,000 RV was lower than both the property's 2005 and 2010 Rating List assessments. Therefore, in order to grant a reduction, I needed to be satisfied that rental values had fallen for kiosks in this locality between the respective AVDs. The 2010 assessment had originally been based on an unadjusted main space rate of £475/m^2. However, on appeal a settlement was reached at an unadjusted main space rate of £420/m^2. This agreement had been based on the assessment of Café at Bus Station, Great Eastern Road, London E15 1BB, which was a newly let kiosk two months prior to the AVD and had an analysed rent of £420/m^2.

26. During the course of the settlement for the 2010 Rating List assessment, the following three assessments were also referred to that had all been assessed at £310/m^2:

    i) Unit 3 Stratford St Jubilee Line Platform, Station Street;
    ii) Unit B at Stratford International Station, International Way Olympic Park; and
    iii) WHS Kiosk Unit at Stratford Underground Station, Great Eastern Road.

27. However, for the 2017 Rating List, those three units had been valued at £550/m^2 and £750/m^2. This indicated to me that rental values for this type of property in the London locality had increased. Accordingly, it did not suggest to me that the nil increase in the appeal property's assessment was unreasonable.

28. In appeals of this nature, the burden rests on the appellant to demonstrate that the existing assessment was unreasonable. However, after having regard to the above findings, I am not satisfied that the adopted unadjusted main space rate of £420/m^2 was excessive. The main space rate of £420/m^2 was above the analysed rent passing on the appeal property as at the AVD; however, for reasons stated, I have treated this rent with caution and preferred to have regard to the whole basket of evidence. Having regard to rents and assessments placed on comparable kiosks, I do not find the current main space rate of £420/m^2 excessive.

29. Accordingly, the appeal is dismissed.

Appeal number: CHG100079824
Date: 22 January 2021