THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 list appeal; club and premises; whether or not there was a demand for nightclubs in Scarborough; level of value; rental evidence; comparable properties; Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141, *appeal allowed in part.*

Re: Pier 1 Bar & Level 2 Nightclub, 20-22 Huntriss Row, Scarborough YO11 2EF

APPEAL NUMBER: CHG100082292

BETWEEN: Crown Properties (Scarborough) Ltd Appellant

and

Mrs J Moore Respondent

(Valuation Officer)

PANEL: Mr S Wood (Senior Member) and Mr L Booth

CLERK: Mrs S Morgan

REMOTE HEARING: Monday 11 January 2020

PARTIES PRESENT: Mr P Clarkson – Appellant's representative

Mr J Hirst – Valuation Officer's representative

Summary of decision

1. The appeal was allowed in part. The appeal property's current assessment was reduced to £5,400 rateable value (RV) with effect from 1 April 2017.

Introduction

2. This is a 2017 rating list appeal. Pier 1 Bar & Level 2 Nightclub, 20-22 Huntriss Row, Scarborough (the 'appeal property') had been entered in the 2017 rating list as 'club and premises' at a RV of £30,250 with effect from 1 April 2017.

3. The challenge proposal was submitted by Lambert Smith Hampton on behalf of Crown Properties (Scarborough) Ltd and was received by the Valuation Officer on 20 March 2019. It had been made on the grounds that the RV shown in the Rating List on 1 April 2017 was wrong. A Nil RV was proposed with effect from 1 April 2017.

4. The Valuation Officer issued a challenge case decision notice in which it stated that based upon the evidence and information available, the rating list entry of £30,250 RV should be reduced to £7,300 RV with effect from 1 April 2017, to reflect that there was little value in the upper floors of the subject property. This was subsequently reduced to £6,500 RV to reflect the occupiers responsibilities for repair and insurance.

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. Mr Clarkson 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 Clarkson confirmed that he was instructed under a fixed fee arrangement as an expert witness and a success related fee as an advocate. 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.

8. 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

9. The issue in dispute was the level of demand, if any, for the appeal property given the lack of demand for large nightclubs in Scarborough.

Evidence and submissions

10. The subject property is a five-storey nightclub located in Huntriss Row, Scarborough. It was built pre 1900s and was refurbished between 1965 and 1970.

11. Mr Clarkson confirmed that he had inspected the property in January 2017 and again in February 2019. He added that the property was currently being occupied by PDR Construction as welfare facilities, whilst they were working on the building opposite the appeal property. PDR Construction occupied the property from November 2018 under a verbal agreement, paying no rent. The landlord was responsible for the costs associated with the property.

12. In April 2010, the appeal property became vacant. It was re-let as a club in October 2011, at a rent of £25,000 per annum (pa), again in 2012 at £30,000pa and over the next 3 years at £35,000pa. The property was vacated in June 2013 and re-marketed for £30,000pa. Mr Clarkson had provided the letting details and an email regarding the earlier letting. He accepted that a small part of the premises was let for a short term as a shop but there was no formal lease and no rent was paid. There was still no demand as a nightclub for a property the size of the appeal property.

13. Mr Clarkson explained that in 2008 there were five large nightclubs in Scarborough, which measured as follows:

    Vivaz, Huntriss Row - 514m^2
    Boleyns, Thomas Street - 626m^2
    Pier 1 Bar and Level 2, Huntriss Row – 758m^2
    Champers, Balmoral Centre – 328m^2
    Club XS, 9 Aberdeen Walk – 746m^2

14. At 1 April 2015, all of these nightclubs had closed. Mr Clarkson provided local newspaper articles which detailed the nightclub closures. This, in his view, confirmed that there was no demand for larger nightclubs in Scarborough. Vivaz was redeveloped into retail units, Boleyns had been converted to a gym and the subject property was now used by contractors for welfare and office use. The other two nightclubs were still vacant. This would, in his opinion, support the reason why there had been no other challenges against these club assessments.

15. Mr Clarkson contended that as there was no demand for a nightclub, the RV for the appeal property should be nil with effect from 1 April 2017.

16. The Valuation Officer's representative, Mr Hirst, accepted that there was no demand to pay £30,000pa for a large nightclub like the appeal property. However, he did believe that there remained a demand for smaller nightclubs in Scarborough. He referred to Bacchus, 7A Ramshill Road. This property was being used as a dance club at AVD and was still in operation until its temporary closure in March 2020, due to the Covid–19 pandemic.

17. Mr Hirst argued that as there was a demand for a smaller club like Bacchus, the subject property would have some value for the hypothetical tenant. He accepted that there was little value in the upper floors of the appeal property and therefore his revised valuation took into account the basement and ground floor areas only, adopting the existing unadjusted price of £60.00/m^2.

18. In support of the unadjusted price of £60.00/m^2, Mr Hirst presented the following:

    Bacchus, 7A Ramshill Road. This club and premises had a total area of 201.90m^2 (134.32m^2 ITMS). The adopted value of £60.00/m^2, gave an RV of £8,000. This property is freehold.

    Champers Nightclub, Balmoral Centre Westborough. This club and premises had a total area of 328.40m^2 (317.81m^2 ITMS). The adopted value of £70.00/m^2, gave an RV of £22,000.

    Karma Bar and Venue, 17 St Thomas Street. This night club and premises had a total area of 549.35m^2 (445.67m^2 ITMS). The adopted value of £72.50/m^2, gave an RV of £32,250.

    9 Aberdeen Walk. This club and premises had a total area of 746.40m^2 (651.90m^2 ITMS). The adopted value of £50.00/m^2, gave an RV of £32,500.

    Raw, 2-4 Wellington Road, Whitby. This club and premises had a total area of 368.81m^2 (290.18m^2 ITMS). The adopted value of £76.00/m^2, gave an RV of £23,000.

19. Mr Hirst also referred to there being no evidence to suggest that there was any attempt to let the appeal property for less than £30,000pa. Bearing in mind, that the last occupier left due to the high rent being paid, would suggest that the rent of £30,000pa, for this size property was too high. On the basis that the ground floor and basement would attract some value, he believed that his revised rateable value of £6,500, which included a 10% allowance for repair and insurance liabilities on the upper floors, was in his view, fair and reasonable. He acknowledged that there was no support for applying this 10% figure, it was just his opinion that the end allowance was justified.

20. Mr Clarkson contended that Bacchus was not a helpful comparable property as it was situated in a different location, not in the town centre. Although it had been assessed at £60.00/m^2, it was much smaller than the subject property and it would qualify for small business rate relief. With regard to tone, Mr Clarkson contended that there was no rental evidence to support the tone. In his view, the tone of the list for large nightclubs in Scarborough had not been established, even though they were four years into the list. Furthermore, with regard to the point made by Mr Hirst that there had been no appeals made on the other club assessments, this may have been because there were no tenants to make the appeals. In any event, he believed that landlords could obtain reductions by other means.

Decision and reasons

21. In arriving at its decision, the panel was governed by rating legislation laid down by Parliament where 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—

    (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.

22. 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 AVD of 1 April 2015, in accordance with the Rating Lists (Valuation Date) (England) Order 2014 (SI 2014 No. 2841).

23. The material day (the date by which physical factors have to be taken into account) was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. In respect of the subject appeal, the material day is 1 April 2017.

24. 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 and to *O'Brien v Harwood (VO)* [2003] which provides the definition of "tone of the list".

25. The appellant's representative contended that at AVD there was no demand for larger nightclubs in Scarborough, as all of those clubs that had existed had closed before 1 April 2015. In the case of the appeal property, it had been available to let at the AVD but there had been no interest in letting the property as a nightclub. As there was no demand for these larger nightclubs, the appellant's representative believed that the assessment for the appeal property should be reduced to nil, as it had no value at AVD. The appellant's representative also made reference to the tone not having been challenged. He argued that there were no rents or evidence of rents to support the £60.00/m^2 that had been applied to the appeal property.

26. The respondent accepted that there was little demand for large nightclubs. However, he believed that there was some demand for smaller clubs. Bacchus was a small club that was in operation at AVD. It was also noted that a small part of the appeal property was occupied in February 2015, albeit for a short period. His revised assessment of £6,500 RV covered the ground floor and basement areas only, at the existing value of £60.00/m^2, with a 10% end allowance for repair and insurance liabilities on the upper floors. The parties had accepted that the upper floor areas were beyond economic repair and should be zero rated.

27. The panel heard arguments from both parties regarding the demand for nightclubs in Scarborough, as well as reasons as to why the tone had not been challenged in any of the comparable properties. Having considered the evidence, the panel found that there was a demand for smaller clubs in Scarborough. This was evidenced by part of the appeal property being let as a smaller unit in February 2015 and was further supported by the smaller club, Bacchus, which was still in operation at AVD. The panel believed that it would be wrong to value smaller nightclubs at positive values and at the same time value the appeal property at nil. It was therefore persuaded that the appeal property had some value to the hypothetical tenant.

28. The panel then turned to the revised valuation put forward by the respondent. No rental evidence had been provided for any of the comparable properties to establish whether the existing price per m^2 for the appeal property was reasonable. The schedule of comparable properties showed adopted values ranging from £50.00/m^2 for the largest property and up to £76.00/m^2 for the others. Weighing up the evidence, the panel noted that the club and premises at 9, Aberdeen Walk was the closest in size to the subject property, and this property was also located in the town centre. It had been valued at a main space price of £50.00/m^2. The panel found that a valuation based on £50.00/m^2, was not unreasonable for the appeal property given its similar size and location was close to that of the property in Aberdeen Walk.

29. By taking £50.00/m^2 as the base figure, and then incorporating the existing 5% allowance for no heating given in the original valuation, gave a main space price of £47.50/m^2. The relativities for the kitchen, internal storage and the drinks cellar in the basement area remained the same. In addition, the 10% allowance, which had already been conceded by the respondent in his revised assessment to reflect repair and insurance liabilities, was reflected as an end allowance. The panel therefore determined a revised RV of £5,400, with effect from 1 April 2017, as set out in the valuation below.

Floor	Description	Area	£/m^2	Value
Ground	Bar/Lounge	42.49	47.50	2018
Ground	Kitchen	9.80	33.25	326
Ground	Internal storage	8.70	23.75	207
Ground	Bar masked Zone B	37.30	47.50	1772
Ground	Lounge remainder	17.80	47.50	845
First	Drinks Cellar	N/A	0.00	0
First	Bar	N/A	0.00	0

First	Foyer	N/A	0.00	0
First	Internal Storage	N/A	0.00	0
First	Internal Storage	N/A	0.00	0
Second	Disco	N/A	0.00	0
Third	Dance Floor	N/A	0.00	0
Fourth	Office	N/A	0.00	0
Basement	Drinks Cellar	42.90	21.37	917
First	Public toilets	N/A	0.00	0
Second	Public toilets	N/A	0.00	0
Third	Public toilets	N/A	0.00	0
				6085
			-10% for R & I	609
				5476
			say	5400

30. In view of the foregoing, the panel allowed the appeal in part.

Order

31. Under the provisions of regulation 38(4) of The Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Tribunal for England orders the Valuation Officer to amend the entry in the rating list to show a revised assessment of £5,400 RV for the appeal property, with effect from 1 April 2017.

32. Under regulation 38(9), the Valuation Officer must comply with this order within two weeks of the date of its making.

Refund of fees

33. If the appeal was successful (either in part or full) a refund of the paid fee will now be arranged (Regulation 13E of the NDR Alteration of Lists & Appeals Regs) provided there is no review of the Tribunal's decision. The refund will take around six weeks to process.

Date: Monday 8 February 2021

Appeal number: CHG100082292