THE VALUATION TRIBUNAL FOR ENGLAND

Summary of Decision: non-domestic rating appeal; Accuracy of Compiled list RV in 2017 Rating List; Shop & Premises; passing rent; basket of evidence; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141, *Appeal Allowed*

Re: Bst & Gnd Flr, 15 Orchard Street, London W1H 6HG

APPEAL NO: CHG100083377

BETWEEN: And So To Bed Appellant

and

Valuation Officer Respondent

BEFORE: Mrs L Bryning (Senior Member – sitting alone)

CLERK: Mr G Wayman

REMOTE HEARING: 14 January 2021

APPEARANCES:

Mr C Poole of Altus Group representing the appellant

The Respondent Valuation Officer was represented by Mrs Y Pearl.

Summary of Decision

1. The appeal is allowed and I confirm a revised RV of £136,000 with effect from 1 April 2017.

Introduction

2. This was a 2017 Rating List appeal. The Rateable Value (RV) of the appeal hereditament was originally £154,000 from 1 April 2017, with a description of Shop and Premises. This was a compiled list appeal so the material day was also 1 April 2017. The appeal was made on 7 October 2020 against the Valuation Officer's (VO) Decision Notice of 10 August 2020 in respect of the appeal property (hereditament) and the RV of £154,000. The VO's decision was to treat the appellant's proposal as not well founded and the entry of £154,000 RV was deemed as correct.

3. I was informed that the appeal property is a retail unit within a seven storey block on the corner of Portland Square and Orchard Street. It was originally constructed in the 1920s and is predominately occupied by office users on the upper floors with some retail on ground floor, including the subject property.

4. It is only one of three retail assessments in the rating list for Orchard Street, the other two are Pret A Manger which is next door (16 & 16a) and number 24 which is a traditional shop. All three units are close together, the rest of the street consists, on the west side the side entrance to Mark and Spencer, this is their flag ship store on Oxford Street, and on the east side is a side of Selfridges where the entrance to its food hall is.

5. Prior to the hearing Mr Poole produced a document which included photographs, a map and a schedule of comparable rental evidence that had already been exchanged at the challenge stage. The Valuation Officer (VO) confirmed in an email she did not object to the inclusion of this document, therefore, it was included in the evidence before me.

6. 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.

7. 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.

8. Mr Poole 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 Poole’s declaration of truth included a statement that he was instructed under a conditional fee arrangement.

9. Mr Poole in his declaration 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. I 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. I therefore considered the “expert” evidence and attached such weight to it as I saw fit.

12. I sat alone as the Senior Member due to the unavailability of a second member. This is entirely appropriate and is in accordance with the Tribunal's Business Arrangements which state: -

"HEARINGS WHERE A MEMBER IS UNABLE TO SIT

Where a panel member is unable to sit for any reason or fails to attend, they will be replaced by another member wherever possible. However, a hearing will proceed with a Senior Member alone where necessary, to avoid postponing the hearing."

13. 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 statement or item of evidence has been overlooked by me.

Issue

14. The matter before me was to determine the correct RV level for the appeal property having regard to the weight of evidence to be attached to the rental evidence in respect of the property and the levels of value placed on comparable assessments from the locality. The appellant's representative proposed a revised RV of £136,000 based on £1,325 per m² ITZA (in terms of zone A). The VO defended the RV in the list of £154,000 with effect from 1 April 2017, based on a rate of £1,500 per m² ITZA, and sought dismissal of the appeal.

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

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 of the Local Government Finance Act 1988). The date of the hypothetical rent was 1 April 2015 (antecedent valuation date or AVD).

17. Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 1 April 2017 (material day) for this appeal.

18. I was informed that the property is held on a lease from 29 September 2013 expiring on 13 November 2024 the occupier is currently paying £162,500 pa which commenced on 14 November 2014 after an approximate 13½ month rent free period. Both parties agreed that this rent analysed to £1,326.40 per m².

19. The appellant's representative argued that in his opinion the principal evidence was the lease agreement on the appeal property. Mr Poole accepted that the passing rent on the appeal property was a lease renewal but pointed out that it devalued to £1,326.40 per m² which was below the tone of £1,500 per m² adopted by the VO.

20. Mr Poole referred to rental evidence of other A1 retail occupiers within Orchard Street. He stated that the rent on 16/16a Orchard Street (Pret A Manger) analysed to £1,648.64 per m². He contended that little weight should be placed on this rent as it is a well-established coffee chain that would pay significantly more to secure sites compared to traditional A1 retail occupiers. He placed more weight on the rent at 24 Orchard Street, occupied by a traditional A1 user, this was a rent review effective from 1 May 2013 and analysed to £1,316.22 per m². Based on the rental evidence on the appeal property and on 24 Orchard Street, Mr Poole concluded that a rate of £1,325 per m² ITZA was appropriate for the appeal property.

21. Mr Poole pointed out that the VO had presented rental evidence on 19 Duke Street to support her adopted tone of £1,500 per m² ITZA. It was his opinion little weight should be placed on this evidence as this property is in a different location some distance away to the East. It is in a stretch of parade with at least seven other shops. In his opinion it is in a better position for a retailer as there are several other units which would attract more footfall. Mr Poole also pointed out that it is a newer property, built in 2014, and in his opinion a newer unit would attract a higher rent.

22. The VO stated that in her opinion the rent for the actual appeal property was unreliable in line with *Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141*, this was because it was a lease renewal with an adjustment made for a lengthy incentive of 12 months and 2 month fit out period. As in her opinion the rent on the appeal property was unreliable consideration was made to the basket of other rental evidence from the locality.

23. The VO stated that at 24 Orchard Street there is a rent review on a lengthy 15 year lease effective from May 2013, this rent is almost 2 years prior AVD. On 16/16a Orchard Street there is also a rent review on a lengthy 20 year lease effective from December 2014. This property is occupied by Pret A Manger and analysis to £1,648.64 per m². Even though the appellant did not place weight on this rent in the VO's opinion this rent did not make the tone of £1,500 per m² seem unreasonable as the Pret A Manger rent analysed to a much higher value.

24. To arrive at a value the VO has looked at another street in the immediate locality namely Duke Street. The VO produced rental evidence on 19 Duke Street, she was of the opinion this is a relevant rent as it a new letting effective from close to the AVD. I was informed that the rent on this property was £160,000 pa effective from 5 September 2014 and analysed to £1,450.06 per m² .

25. In the VO's opinion Duke Street and Orchard Street locations are similar. Duke Street joins Wigmore Street at a junction to the South. Duke Street and Orchard Street run parallel in prime positions North of Oxford Street and run alongside Selfridges for most of their lengths.

26. In arriving at a value of £1,500 per m² ITZA the VO has placed most weight on the new letting at 19 Duke Street which was effective close to AVD. This property is located in the immediate area and is located on a comparable street and is of comparable size. Less weight should be placed on the rental evidence within Orchard Street as it mainly consists of rent reviews and a lease renewal which are effective further from AVD. In the VO's opinion based on the evidence £1,500 per m² ITZA is reasonable and the appeal should be dismissed

27. I am aware of the guidance given by the Lands Tribunal in the case of Lotus and *Delta v Culverwell (VO) & Leicester City Council [1976] RA 141*, which dealt with the issue of the weighting of evidence. I took account of both parties' submissions on what weight should be placed upon the passing rent on the appeal property. In order to help me establish a value and decide what weight to place on the passing rent I also considered the whole basket of rental evidence presented.

28. I examined the rental evidence on other properties within Orchard Street. I placed little weight on the rental evidence on 16/16a Orchard Street as it seemed out of line with the other two rents within Orchard Street. It was occupied by Pret A Manger a well-established major coffee chain whereas as the other properties were occupied by traditional A1 retail users. The rent on 24 Orchard Street, which is occupied by a traditional A1 user, analysed to a very similar value to that of the appeal property.

29. Even though it was a new letting I placed less weight on the rental evidence within Duke Street as I agree with Mr Poole that this property is located in a more prominent position. It is situated in a road that has several other shops, which would attract more footfall. I also considered that as this property was a much newer property, built in 2014, it would attract a higher value.

30. Having considered the basket of evidence presented and taken it all into account. I am satisfied that Mr Poole has demonstrated that the value of the appeal property is different to the values achieved within Duke Street. I placed most weight on the rents on the appeal property and 24 Orchard Street which indicate to me that the value of £1,325 per m² ITZA proposed by Mr Poole was not unreasonable for the appeal property.

31. I therefore allow the appeal and confirm a rounded RV of £136,000 with effect from 1 April 2017.

Order:

32. In accordance with Regulation 38 (4) and (9) of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, the Valuation Officer is ordered to alter the appeal property's entry in the Rating List to £136,000 Rateable Value with effect from 1 April 2017. The Valuation Officer must comply with this Order within two weeks of its making.

33. As the appeal was successful 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.

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Dated: 8 February 2021