VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; challenge against compiled List entry; restaurant and premises; accuracy of rateable value; analysis of rent on comparable property; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; appeal dismissed.

RE: 449 Norton Road, Norton, Stockton on Tees TS20 2QQ

APPEAL NUMBER: CHG100083490

BETWEEN:	Scrann Ltd	Appellant
	And	
	Mr R Roberts (Valuation Officer)	Respondent

PANEL: Mrs AE Fielder (Senior Member)
Mrs A Taylor

CLERK: Miss F Willson

REMOTE HEARING ON: 30 November 2020

APPEARANCES: Mr J Fraser from Joe Fraser Chartered Surveyors acting as advocate only (on behalf of the Appellant)
Mr R Fuller (on behalf of the Valuation Officer).

Summary of decision

1. Appeal dismissed. The current entry in the Rating List is to remain at £21,750 rateable value (RV) with effect from 11 December 2017.

Introduction

2. The appeal arises from a challenge made by the appellant's representative on 24 March 2019, in respect of 449 Norton Road, Norton, Stockton on Tees TS20 2QQ (the appeal property). The challenge was in respect of the entry in the rating list at £26,250 RV effective from 11 December 2017. The appellant sought a revised assessment of £16,000 RV with effect from 11 December 2017. After considering the merits of the challenge, the Valuation Officer determined that the RV should be reduced to £21,750 and a decision notice to this effect was issued on 22 October 2019. The appellant made an appeal to this tribunal against that decision notice which was received on 20 February 2020.

3. 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.

4. 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.

5. The appeal property is in a prominent ground floor location in the village of Norton and comprises of a restaurant with an outside seating area. It is opposite an Army Reserve centre on the A139 the main trunk road and there is a bus stop in front of the appeal property. There is free on road parking in the vicinity.

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

Issues

7. The issues between the parties concerned the measurement of the appeal property and its resulting RV. Specifically, the rate in terms of main space that should apply.

Evidence and submissions

8. Mr Fraser submitted a bundle of evidence which included details of the appeal property, the issues in dispute, details of comparable properties and photographs.

9. With reference to his comparable properties and the appeal property he asked the panel to confirm a revised rateable value of £16,000 from 11 December 2017.

10. Mr Fuller referred the panel to the challenge application and decision.

11. In consideration of his comparable properties and the passing rent, Mr Fuller asked the tribunal to confirm the RV of £21,750 with effect from 11 December 2017.

Decision and reasons

12. 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). Matters that affect the physical state or enjoyment of the property or the locality were to be taken as at 11 December 2017 (material day) for this appeal. When assessing the RV of any property, rating law also requires that the property must be assumed to be 'vacant and to let', and in the state set out in Schedule 6 of paragraph 2(7) of the Act, in relation to both the physical nature of the property and its mode or category of use.

13. Where rental evidence is available, the weight to be attached should be considered in light of the following six propositions set down in *Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141.

- Where the hereditament which is the subject of consideration is actually let, that rent should be taken as the starting basis.

- 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 section 19(6) of the General Rate Act 1967 the more weight should be attached to it. (These statutory requirements now contained in Schedule 6, Para 2 (1) Local Government Finance Act 1988 (as amended by the Rating (Valuation) Act 1999)).

- 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.

- 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 be properly be referred to as giving an indication of that opinion.

- In light of all the evidence an opinion can then be formed of the value of the appeal hereditament, the weight to be attached to 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.

- In those cases where there are no rents available of comparable properties a review of other assessments may be helpful but, in each circumstance, it would be difficult to reject the evidence of the actual rent.

14. Mr Fraser referred the panel to the detailed floor plan that he had provided in his evidence which measured the net internal area (NIA) as 203.88m^2. He stated that the valuation office had not provided a detailed plan to explain how their measurements had been calculated. They measured the appeal property as being 224m^2 NIA.

15. Mr Fraser explained to the panel that the appeal property was outside of the main leisure area of Norton, which was the High Street where many of the restaurant and bars were located. It fell therefore outside of the main footfall on an evening. Norton was a typical village centre with the customers normally entering the High Street from the southern end. Norton Road where the appeal property was situated was on the northern end and so was not on the route for most customers.

16. He drew the panel's attention to comparable properties in the same location as the appeal property:

    - 85 High Street, at the centre of Norton High Street with high footfall and street parking outside, base rate of £140 per m^2.
    - 12 Harland Place, fronts onto the High Street with parking outside but is zoned with an overall average of £67.76 per m^2.
    - 7 Harland Place, fronts onto the High Street base rate of £115 per m^2.
    - 10 Harland Place, fronts onto the High Street base rate £115 per m^2.
    - 117-117a High Street a similar position to 85 High Street base rate of £120 per m^2.

    Mr Fraser submitted that all the comparable properties he had listed were in the centre of the village in a far superior location to the appeal property. The appeal property, however, had a base rate of £115 per m^2 which did not in his opinion take account of the poor location of the property.

17. Mr Fraser believed that the appeal property should have a base rate of £100 per m^2 leading to an RV of £16,000. This he argued was supported by the rent on the appeal property which was £12,000 per annum with a two year rent free period commencing on 11 December 2017.

18. The panel noted that although all the comparable properties were in the location of the appeal property none of them had a base rate of £100 per m^2. The lowest base rate was £115 per m^2 and this was the base rate used to calculate the RV of the appeal property. They also noted that the property 12 Harland Place had been zoned and so they gave it little weight as a comparable property as it's RV had been calculated using a different method.

19. Mr Fuller submitted that the appeal property was, in his opinion, in a prominent location with high visibility from the A139 which ran straight passed the property. It also had a bus stop outside which allowed customers of the appeal property to travel by bus especially if they were intending to drink alcohol with their meal. There was also free on street parking around the property.

20. The panel put weight on the fact that having a major road going passed the appeal property and a bus stop outside does not make the appeal property in a poor location. They could see that those things could in fact be helpful in attracting trade to the property.

21. In connection with the measurements, Mr Fuller outlined to the panel that the difference between those put forward by the appellant and the valuation officer were the same as that of the pizza preparation area and pizza oven. The pizza preparation area and pizza oven were both part of the dining experience in his view and it was valuation office practice to include such spaces in the size of the restaurant. The valuation officer had measured the appeal property at 224m^2 compared to the appellant's representative measurement of 203.88m^2.

22. The panel noted the two areas concerned and gave weight to the fact that these areas were open to the customers for them to watch the pizzas being prepared. They therefore were part of the dining experience and so had a commercial value that needed to be reflected in the RV as part of the restaurant area.

23. Mr Fuller referred the panel to the case of *Lotus and Delta* in which it was held that the first consideration when setting an RV was the rent passing on the actual property which in this case was £12,000 per annum. He did not accept that this rent was at market value as it was much lower than the other rents in the area. The lease also included a two year rent free period. That meant that the rent needed to be adjusted to conform with the hypothetical rent in the definition for rating purposes.

24. Further he had not been given any evidence as to how the appellant had used the rental figure in calculating the base rate of £100 per m^2 or the proposed RV of £16,000. No rental evidence had been supplied to support the base rate of £100 per m^2.

25. Another type of evidence to be looked at in *Lotus and Delta* was comparable properties which were occupied in the same mode and category as the appeal property and the rent passing. In all but one of the appellant's comparable properties there was no rental evidence available. The rental evidence was available on 117-117a High Street which was £18,500 per annum and that supported the RV for that premises of £17,250. The lease commenced in January 2014 just over one year post AVD.

26. Mr Fuller referred the panel to the comparable properties he had submitted:

- 6-8 High Street, with an actual area of 249.35m^2 and a base rate of £120 per m^2. The lease commenced on 29 September 2017 with a rent of £22,175 per annum which supports the RV of £17,500.

- 71 The Green, which is in a better location than the appeal property with an actual area of 57.46m^2 and a base rate of £120 per m^2. The lease commenced on 24 May 2013 of £10,500 per annum supporting the RV of £7,400.

- 397 Norton Road, which is on the same road as the appeal property, with an actual area of 121.26m^2 and a base rate of £140 per m^2. The lease commenced on 1 June 2014, less than a year before the AVD, with a rent of £8,000 per annum supporting the RV of £14,000.

Mr Fuller submitted that his comparable properties were in the same location, of similar size and were all restaurants or cafes. They all had a base rate of between £120 to £140 per m^2. They therefore supported the base rate of the appeal property at £115 per m^2.

27. The panel gave weight to these comparable properties as they were all the same type and within the same location as the appeal property. The basket of evidence they provided supported the base rate of £115 per m^2 for the appeal property.

28. In connection with the disputed size of the appeal property the panel put weight on the pizza preparation area and the area with the pizza oven being part of the dining experience. They determined that it should therefore be included in the size of the restaurant for the purposes of the RV and they found the size of the appeal property to be $224m^2$.

29. Having considered both parties' comparable properties, the panel concluded that the base rate of £115 per m^2 was reasonable. The panel held that the existing assessment was fair and reasonable and the RV should remain at £21,750 from 11 December 2017.

30. In cases of this nature, it is for the appellant to demonstrate that the RV is unreasonable, and the panel found that in this case the appellant had failed to do so.

31. The appeal is therefore dismissed.

.

Date: 11 December 2020

Appeal number: CHG100083490