**THE VALUATION TRIBUNAL FOR ENGLAND**

*Non Domestic Rating Appeal; 2010 Rating List; Shop and premises; Lotus and Delta Ltd v Culverwell (VO) and Leicester City Council* [1976] RA 141; *Basic Price; Rental and Comparable evidence; Tone; Appeal Dismissed.*

Re: 29 Parliament Row, Hanley, Stoke on Trent, ST1 1PW

APPEAL NUMBER: CHG100084983

BETWEEN: Lemaca Ltd Appellant

and

Mr D Virk Respondent

(Valuation Officer)

PANEL; Mr W Read ( Chairman)

Mrs F Higgin

CLERK: Mr L Bertie

REMOTE HEARING ON: 13 January 2021

APPEARANCES:

Mr A Simons of Altus Surveyors for the Appellant

Mr A Wilkinson (Valuation Officer's Representative)

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**Summary of Decision**

1. The appeal is dismissed and the assessment of the appeal property remained unaltered.

**Introduction**

2. The appeal before the panel was a 2017 Rating List appeal. The Rateable Value (RV) of the appeal hereditament was £51,500 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. At the challenge stage, the Valuation Office Agency (VOA) altered the Rating List to £46,500 effective from 1 April 2017. The appeal dated 16 October 2020 was received

against the Valuation Officer's (VO) final Decision Notice of 13 August 2020. The VO's decision was to treat the appellant's proposal as not well founded and the entry of £46,500 from 1 April 2017 was deemed as correct. The appellant sought a rateable value of £36,500

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. Mr Simons appeared on behalf of the Appellant as both surveyor-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 Simon's declaration of truth included a statement that he was instructed on a contingency fee basis. 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 the evidence supported the client's case.

6. The Valuation Officer's representative, Mr Wilkinson, advised the panel that he appeared as an advocate for the case but was an expert on general valuation matters.

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

8. 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 it by the parties should not be construed as an indication that that statement or item of evidence has been overlooked by the panel.

9. The subject property, comprises a two storey retail unit, with ancillary accommodation. It operates as a McDonalds fast food restaurant in a pedestrianised area of Hanley Town centre. The area of the subject property is 254.99 $m^2$ with a base rate of £450 per $m^2$.

**Issue**

10. The issue in this appeal concerned the price per $m^2$ in terms of main space.

**Evidence and Submissions**

11. The Appellant's representative provided a written submission of his case, photographs, a layout plan and valuation of the appeal property and details of comparable properties in support of his case. He contended that the Zone A rate of the appeal property should be reduced to £350 per $m^2$ because of its positioning in Parliament Row, based on his comparable properties. He therefore proposed a revised Rateable Value of £36,500 with effect from 1 April 2017.

12. The Valuation Officer's representative provided details of his case, a copy of the proposal, location and layout plans, photographs and a valuation of the appeal property and rental and settlement evidence of comparable properties. He stated that the appeal property had been valued based on its positioning within Parliament Row and rental evidence of other retail units in the locality at £450 per $m^2$ . He therefore requested the Panel to dismiss the appeal.

**Decision and Reasons**

13. After due consideration of all of the evidence presented before it by the parties, the Panel dismissed the appeal.

14. In arriving at its decision, the Panel had regard to the basis of valuation from schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999, which states:

"(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]".

15. For the purposes of the 2017 Rating List the date at which this hypothetical letting is assumed to take place, the antecedent valuation date (AVD), has been set by Parliament as the 1 April 2015.

16. This appeal resulted from a proposal on the grounds that the 2017 compiled list entry in the list for the appeal property was incorrect. The 'material day', i.e. the date matters

referred to in Paragraph 2 (7) of Schedule 6 to the Act have to be looked at, for this appeal was therefore the effective date of this entry, i.e. 1 April 2015.

17. In considering this evidence, the Panel was mindful of the propositions detailed in Lotus and Delta Ltd v Culverwell (VO) and Leicester City Council [1976] RA 141 and noted that, there was a current rent passing on the appeal property of £89,784 per annum with effect from October 2006 .

18. The Panel treated this rent with caution, as McDonalds owned the freehold of the appeal property and the rent was agreed on a franchise lease with the existing tenant. There were no details provided by either party but it was clear to the panel that this was not an 'arm's length' agreement. Consequently, the panel gave little weight to this passing rent. However, the Panel in keeping in line with the guidance in Lotus and Delta Ltd v Culverwell (VO) referred to assessment evidence on other properties in the locality to determine the assessment on the appeal property.

19. Rental evidence was submitted on 2 Parliament Row, shop and premises, which had a rent of £100,000 per annum p.a effective from 7 June 2014 on an 11 year assigned lease on FRI terms. The new occupier had reduced the rent from £155,000 to £100,00 p.a. on a review from 3 November 2013. The rent analysed at £793.21 with a Zone A price of £800 $m^2$; 10 Parliament Row, Shop and Premises which had a rent of £35,000 effective from 4 July 2014 on a 10 year lease on FRI terms. The rent was adjusted for stepped rent incentive equivalent to 6 months rent free period, devalued over the first 5 years. The rent was analysed at £449.49 per $m^2$ with a Zone A of £450.00 per $m^2$; 17 Parliament Row, shop and premises which had a rent of £30,000 effective from 15 June 2013 on a new 1 year lease on FRI terms. The rent was analysed at £781.05 p.a. with a Zone A price of £700 $m^2$ and 21 Parliament Row, Shop and premises which had a rent of £32,000 p.a. effective from 27 November 2015. The rent was agreed on a 5 year term on FRI terms having been reduced from £45,000 p.a. This rent analysed at £672.41 p.a. with a zone A price of £700.00 $m^2$.

20. The Valuation Officer's representative contended that the rate adopted of £450 per $m^2$ for the appeal property was in line for the historical tone for properties on this side of the Parliament Row, based on the rental evidence and its position in the row.

21. The panel also noted the evidence submitted by the Appellant's Representative at units 6, 8 & 10 Parliament Row where the tone has been reduced and agreed at the Valuation Tribunal (VT) to £450 per $m^2$ . He highlighted that the subject unit is located at the periphery of the pedestrianised area in a separate block with the break and dead frontage separating the subject block from the main retail stretch. He also referred to the difference in values between the 2010 list and 2017 list where the appeal property's tone was 35% lower than the tone on the retail block 2 to 12 Parliament Row.

22. Moreover, he contended that values and footfall in this part of the town have fallen dramatically partly due to the closure and relocation of the Town Bus Station and removal of bus stops and road changes in this part of the Town Centre from October 2013. The fall in values was also compounded by the closure of BHS at 9/15 Parliament Row in August 2016 which was the main anchor store at this far end of the town centre which still remains empty.

23. The panel are aware that the block 2 to 12 Parliament Row, has been reduced at VT to £450 per $m^2$ and the block 9 to 25 Parliament Row which was opposite, valued at a higher rate of £700 per $m^2$. This appeared to be in line with the rental evidence submitted to the panel albeit with adjustments to be made to equate to AVD values. The panel accepted that there was a clear break in the run of properties after 23-25 Parliament Row and this was reflected in the lower values applied after this property. However, the panel did not agree that the price per $m^2$ of the appeal property should be reduced in line with 31 Parliament Row (£300 $m^2$) as from the documentary evidence, the appeal property was in the most prominent position in the row of properties in 29-41 Parliament Row, as it had a return frontage which allowed prospective customers to see the side of the property with windows and signage.

24. The Panel determined that based on the documentary and assessment evidence, it had not been persuaded by the Appellant's representative that the Zone A price for the appeal property at £450 per $m^2$ was incorrect. The Panel considered that this figure of £450 m2 was not unreasonable for that part of the row and that the burden of proof against the current value had not been proven.

25. Moreover, the panel determined that the rental evidence submitted reflected and took account of the contentions of the Appellant's representative of the effect of the closure and relocation of the Town Bus Station, removal of bus stops and road changes in this part of the Town Centre from October 2013 and the closure of BHS at 9/15 Parliament Row in August 2016.

26. In addition, the Panel found no substance in the argument put forward by the appellant in comparing changes in Rateable Value between the 2010 and 2017 Rating Lists as a factor to support the inaccuracy of the current assessment. The panel was aware that the purpose of a revaluation exercise, which in this case took place seven years apart, was to value each hereditament appearing in the List completely afresh, taking into account the rental values and economic factors at the antecedent valuation date of 1 April 2015 and the physical factors at the compilation date of 1 April 2017 and it was not a mathematical exercise whereby every entry gets uplifted to the same degree.

27. The Panel considered that the overall totality of the comparable assessment evidence submitted was of assistance in showing the varying levels of assessment for retail premises in the locality. The Panel was therefore of the opinion that the figure of £450 per $m^2$ for the appeal property was reasonable based on the totality of evidence and the position of the appeal property. Consequently, the appeal was dismissed.

**Date:** 1 February 2021

**Appeal Number:** CHG100084983