THE VALUATION TRIBUNAL FOR ENGLAND

*Non-Domestic Rating Appeal; Lotus and Delta v Culverwell (VO)* [1976] RA 141; *Restaurant and premises; main space price; appeal allowed in part.*

RE: Basement And Ground Floor, 4 Blenheim Street, London, W1S 1LB

APPEAL NUMBER: CHG100085002

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| BETWEEN: | Rising Sun UK | Appellant |
| | and | |
| | Mr A Ricketts<br>(Valuation Officer) | Respondent |

BEFORE: Mrs X Holt (Senior Member)
Ms J V Barnes

CLERK: Mr R Gath IRRV Hons

REMOTE HEARING 3 on 9 March 2021

APPEARANCES: Mr D Hill from Altus Group (Appellant's representative)
Mr S Carter from Altus Group (Appellant's representative)
Miss L Thomas (Valuation Officer's representative)

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## Summary of Decision

1. Appeal allowed in part. The entry is reduced to Rateable Value £71,000 with effect from 1 April 2017.

## Introduction

2. This appeal has been brought in respect of the following: Basement And Ground Floor, 4 Blenheim Street, London, W1S 1LB (the 'appeal property'), which was entered in the 2017 rating list as 'Restaurant and premises' at rateable value (RV) £85,000 effective from 1 April 2017 based on a zone A rate of £1450/m$^2$. However, following the challenge, the Valuation Office Agency (VOA) reduced the rateable value to £82,000 effective from 1 April 2017, based on a Zone A rate of £1400/m$^2$, although the VOA have recently increased the RV to £82,500 due to the appeal

property having air conditioning. The appellant, in his challenge documents, was seeking a rateable value of £52,000 based on a Zone A rate of £900/$m^2$.

3. The appeal property was located in Mayfair. Blenheim Street is a small road off New Bond Street. It leads to Woodstock Street which is off Oxford Street. The appeal property was located in a six storey building with the restaurant on the ground floor and the basement, with the remainder of the floors being residential. The restaurant had a total area of 80.2$m^2$.

4. 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.

5. 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.

6. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, Mr Hill made an appeal to this Tribunal because he disagreed with the current rateable value. The appeal to this Tribunal has been made on the grounds that the valuation for the appeal property is not reasonable[1].

7. This is a compiled list appeal so the material day is 1 April 2017. The appeal to this Tribunal was made on 7 October 2020 following the Valuation Officer’s Decision Notice of 24 September 2020 in respect of the appeal property (hereditament).

8. As Mr Hill appeared on behalf of the appellant as expert witness, the clerk asked 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. It was established that Mr Hill’s company would receive a conditional fee or some other success related arrangement if the rateable value was reduced as a result of the panel’s decision.

10. However, Mr Hill declared that he understood and accepted that his duty was to the Tribunal in giving his evidence and that 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.

11. 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

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[1] Regulation 13A(2) of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009.

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).

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

13. 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 it being overlooked.

**Issues**

14. The issue for determination was the rateable value of the appeal property.

**Evidence and submissions**

15. Mr Hill was acting as expert witness. Mr Carter was acting as advocate. The appellant had provided the Tribunal with both parties' submissions. The evidence included the following: his statement of case, a location plan, photographs of the appeal property and the locality, details of his comparable properties, the current and proposed valuations, a copy of the challenge proposal, VOA challenge decision notice and copies of correspondence that had passed between the parties.

16. The appeal property was held on a 15 year lease, effective from 26 April 2006. The rent was initially £56,000 although there was an additional £15,000 for fitting out costs. It was subject to five yearly rent reviews and the rent is currently £86,000, which was agreed in 2016. Mr Hill did not know what the rent was as at the AVD.

17. Mr Hill argued that the agreed rent was too far from the AVD to be reliable. However, to support his argument that the appeal property should be valued at a Zone A rate of £900/$m^2$ he provided the following rental evidence from properties within the locality:

| Property | Rent | Total Area | Analysed rent |
|---|---|---|---|
| Basement and Ground Floor, 22 Woodstock Street | £118,327 from 25 December 2015 | 192.28$m^2$ | £947/$m^2$ |
| Basement and Ground Floor, 8-10 Blenheim Street | £202,500 agreed in July 2011 | 289.19$m^2$ | £1,577/$m^2$ |
| Basement and Ground Floor, 1 Woodstock Street | Lease renewal of £70,000 from August 2015 | 98.06$m^2$ | £1,318/$m^2$ |
| 15 Woodstock Street | Not given | 257.40$m^2$ | Not given |

18. He explained that the restaurant at 8-10 Blenheim Street was for fine dining. It was five times larger and therefore not a like for like comparison, but, it showed that the existing Zone A rate of £1,400/$m^2$ for the appeal property was too high.

19. He argued that 1 Woodstock Street was the closest in terms of size and was the best comparable property. But, it was in a better location, it had a dual aspect, dual use lease, a lot of natural light, outdoor seating, and was overall more pleasing than

the appeal property. Mr Hill had taken 10% off the analysed rent for each of the dual use and aspect, which resulted in a zone A rate of £1,186/$m^2$. He had also taken the value of £947$m^2$ for 22 Woodstock Street, added 10% as that unit was in an inferior location, which gave a value of £1,042$m^2$.

20. Taking an average of these two properties, the values show that the zone A rate should be £1,100 which Mr Hill was arguing for and he asked the panel to allow the appeal.

21. Miss Thomas was representing the Valuation Officer as advocate and expert witness. She contended that the appeal property was a high end sushi bar and that it was close to New Bond Street which attracted high end operators and customers, unlike the properties in Woodstock Street which were closer to Oxford Street and appealed to different customers.

22. She also contended that in accordance with *Lotus and Delta v Culverwell (VO)* [1976] RA, the rent for the appeal property was a starting point. She argued that the latest rent provided good clean evidence of the rental value which supported the current rateable value for the appeal property and she asked the panel to dismiss the appeal.

**Decision and reasons**

23. The task for the panel was to determine the rateable value for the appeal property, which represented a rent that a hypothetical landlord and tenant would agree as at the antecedent valuation date (AVD),1 April 2015. The common date was used to ensure that every property was treated in a consistent way; otherwise similar properties would have different rateable values if numerous dates were used, as rental values fluctuated over time.

24. There was another important date for rating appeals and that was known as the 'material day.' This was the date on which the physical factors had to be taken into account. In this appeal, the material day was 1 April 2017.

25. The term 'rateable value' is defined in Schedule 6 to the Local Government Finance Act 1988 (as amended):

> "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;
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> 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; and

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".

26. The Lands Tribunal judgment in *Lotus and Delta v Culverwell (VO)* [1976] RA 141 provided authoritative guidance on the weight to be attached to rental and assessment evidence. The rent on the subject property was considered to be the correct starting point but, where available, rents on similar properties were also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence could then be weighted

27. The panel was disappointed that Mr Hill did not know the rent for the appeal property at the AVD, as that would have assisted it in coming to its decision. Although Mr Hill argued that the rent for the appeal property was not reliable, the panel applied little weight to this, as rents one year either side of the AVD could be useful.

28. As the rent as at the AVD was not known, the panel then considered the comparable properties that had been presented to it. Miss Thomas argued that the rent for 8-10 Blenheim Street was unreliable as it was agreed in 2013 and too far from the AVD. Mr Hill had suggested that the property was overrented as it was empty, having had two previous occupiers during the past six years. As both parties had argued that the rent was unreliable for various reasons, the panel found that the rent on this property did not assist it.

29. The parties also referred to 15 Woodstock Street. This property was the closest comparable property to Oxford Street geographically. The VOA had reduced the RV down to £140,000 based on an unadjusted rate of £1,025/$m^2$. The panel did not consider this property to be helpful either as it was closer to Oxford Street and, being occupied by a restaurant chain, it appealed to a different market than the properties in Blenheim Street.

30. With the panel finding that two of the comparable properties were not particularly helpful in establishing the rateable value for the appeal property, it then considered 1 and 22 Woodstock Street.

31. On examining the rents, the panel noted that 22 Woodstock Street was over twice the size of the appeal property, and had a rent of £118,000. Whilst there may have been an element of a quantum allowance, half the rent would be £59,000. However, a rent at £59,000 did suggest to the panel that 22 Woodstock Street, which was agreed at £950/$m^2$, was not as valuable as 1 Woodstock Street which had the rent analysed at £1,318/$m^2$.

32. Mr Hill had argued that 1 Woodstock Street was more valuable than the appeal property. The panel noted that the rent for that property was agreed in August 2015 at £70,000, which was a lease renewal. But, nonetheless, it was £16,000 less than the rent for the appeal property which had been set less than a year later, albeit on a rent review not a lease renewal. Miss Thomas had agreed that rents would have increased between 2015 and 2016. However, these two rents gave an indication of the value of the appeal property.

33. The panel then considered the location of the other two comparable properties. 22 Woodstock Street was located next to Bonhams which would increase trade, but it was situated at the end of Woodstock Street in a cul-de-sac which the photographs showed was in an inferior position. Therefore the panel concluded that, apart from when there were auctions, there would not be much passing trade, affecting the rental bid of a hypothetical tenant. 1 Woodstock Street had permission for A1 and A3 use, it was on a corner with dual aspect and it was more aesthetically pleasing with larger windows, all of which would attract a higher rental value.

34. Having considered the respective advantages and the disadvantages of these two properties, the panel concluded that the zone A rate should sit in the middle of the two properties.

35. Mr Hill had taken the analysed rent for 1 Woodstock Street and allowed a 10% reduction for dual use and corner pitch which valued it at £1,186/m$^2$. He had not provided any evidence to support this adjustment, and the rent did not appear to support this reduction as it was lower than the rent on the appeal property.

36. He had also taken the agreed value of £950/m$^2$ for 22 Woodstock Street and added 10% for the inferior location coming to a value of £1,042/m$^2$, giving an average of £1,114/m$^2$, but again, he had not provided any evidence to support this adjustment.

37. Having examined the photographs provided by the parties, the panel concluded that the appeal property was not such an inferior property to 1 Woodstock Street as Mr Hill had suggested, as it was closer to New Bond Street and therefore attracted more high end customers. It therefore applied a 5% difference to the main space price for 1 Woodstock Street for the advantages of dual use and the corner pitch which suggested a value of £1,252/m$^2$.

38. The panel also concluded that the appeal property was in a far better location that 22 Woodstock Street. Applying a 20% uplift to the agreed value for that property totalled £1,140/m$^2$. An average of these two values gives £1,200/m$^2$, which the panel concluded to be the correct zone A rate and allowed the appeal in part. The revised valuation is below.

| Floor | Description | Area | £ per m$^2$ | Value |
|---|---|---|---|---|
| Ground | Retail Zone A | 28.00 | 1,200.00 | 33,600 |
| Ground | Retail Zone B | 17.40 | 1,200.00 | 20,880 |
| Basement | Public toilet | 4.10 | 300.00 | 1,230 |
| Basement | Restaurant | 19.00 | 600.00 | 11,400 |
| Basement | Kitchen | 11.70 | 300.00 | 3,510 |
| | | | Sub-total | 70,620 |
| | | | Addition for air conditioning | 500 |
| | | | Total | 71,120 |
| | | | Rateable value say | 71,000 |

**Order**

39. 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 reduce the entry in the rating list to rateable value £71,000 with effect from 1 April 2017.

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

**Refund of appeal fees**

41. As the ground of the appeal has been made out, 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:** 26 March 2021

**Appeal number:** CHG100085002