THE VALUATION TRIBUNAL FOR ENGLAND

*Non-domestic rating; 2017 list appeal; The Valuation for the hereditament was not correct; Base rate; Tone £m$^2$; End allowances; comparable properties; Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141; Appeal allowed in part.*

Re: 47 Farringdon Street, London EC4A 4LL

APPEAL NUMBER: CHG100093721

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| BETWEEN: | Vivat Bacchus Ltd | Appellant |
| | and | |
| | The Valuation Officer | Respondent |

BEFORE: Mr M Heslop-Mullens

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| CLERK: | Mr Duncan Adamson |
| REMOTE HEARING 2 | 19 July 2021 |
| PARTIES PRESENT | Mr Paul Tribe of Conneely-Tribe Appellant's representative (Advocate and Expert Witness) |
| | Ms Lisa Gazzard Respondent's representative |

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**Summary of decision**

1. The appeal was allowed in part. I determined that the unadjusted rate should be £182m$^2$ giving a Rateable Value (RV) of £85,000 for the appeal property effective from 1 April 2017. No end allowance is due.

**Introduction**

2. The Tribunal Business Arrangements provide that a hearing will normally take place before a panel of two Members of the Tribunal, including at least one Senior Member. However, the arrangements also provide that a Senior Member may sit alone to avoid a postponement of the hearing where a second Member of the Tribunal is unable to sit.

3. In respect of this hearing, another Member of the Tribunal was unable to sit. I am therefore satisfied that, in order to avoid a postponement of the hearing, I am authorised by the Tribunal Business Arrangements to hear and determine this appeal sitting alone.

4. The appeal was brought in respect of 47 Farringdon Street, London EC4A 4LL (the appeal property), a combination of two units arranged over 5 levels, 4 of which are usable. It is located in the City of London close to the Islington boundary near Smithfields market.

5. This is a 2017 Rating List appeal and the current rateable value of the property is £174,167 less three end allowances totalling 42%:-

   | | |
   |---|---|
   | Adjustment for quality | 12% |
   | Shape | 25% |
   | Size or quantity allowance | 5% |

   Giving a net rateable value of £109,203 rounded down to £109,000 with effect from 1 April 2017.

6. The challenge submission date was 26 April 2019 with the challenge being completed 22 September 2020.

7. The appellant sought a reduced rateable value and the inclusion of an end allowance on the appeal property contributing to a proposed Rateable Value of £71,750.

8. The respondent contended that end allowances were no longer appropriate and the entire appeal property should be re-assessed in accordance with the statutory valuations and comparable rental levels.

9. 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.

10. 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.

11. Mr Tribe appeared on behalf of the appellant in a dual role as Surveyor advocate and as expert witness. In view of the Upper Tribunal’s judgment in *Gardiner & Theobald LLP v David Jackson (VO)* [2018] UKUT 0253 (LC), his 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 or not the evidence supported the client’s cases.

12. 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). I therefore considered the expert evidence and attached such weight to it as I saw fit.

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

**Issue**

14. Whether the rateable value should be reduced from £109,000 to £71,750 with the inclusion of an end allowance of 15% for quantum, multi levels and shape.

**Evidence and submissions**

15. The evidence bundle comprised all of the documents exchanged between the parties as part of the challenge process: Valuation Officer's challenge case decision notice; rental evidence summaries; appellant's challenge submission; photographs and location plans of the appeal property and comparable assessments and an email exchange between the parties.

16. The property was held on two separate leases with each subject to five yearly rent reviews:-

    - Unit 2, the original restaurant on three levels has an entrance on Farringdon Street and contained a rear bar on an upper mezzanine floor and the restaurant and kitchen in the basement. The unit was leased from 1 May 2003 at a rent of £37,500 per annum with the lease expiring 20 December 2026. There had been no rent increases at any of the 5 yearly rent reviews.

    - Unit 3, this was leased and combined with Unit 2 from 2007. It has an entrance on Charterhouse Street leading directly into the main restaurant and bar along with a space under the restaurant used as a cellar and store. This unit leased from 27 July 2005 at a rent of £40,000 per annum with the lease expiring 20 December 2026. This rent was increased at rent review on 27 July 2015 to £62,000 per annum.

    - The total current yearly rent on the entire appeal property was therefore £99,500.

17. The appeal was originally listed for hearing on 8 March 2021. During that hearing there came to light some issues in dispute namely, whether the basement floor had any natural light, the number of floor levels, the configuration of the premises and the contents of the rent review memorandums. The hearing was therefore adjourned and appropriate Directions issued in respect of these matters.

18. The property was subsequently inspected by both parties on 29 March 2021 with the outcome that the respondent proposed that the rateable value now be amended from £109,000 to £85,000 with effect from 1 April 2017. This was based on a rate of £182$m^2$ for the ground floor restaurant (Unit 3) and £91$m^2$ for the rest of the property on the lower ground floor and the basement (Unit 2).

19. However, the respondent could not agree to an additional end allowance of 15% requested by the appellant. This was now the sole area of dispute.

**Decision and reasons**

20. 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.

21. Both parties had referred to *Lotus and Delta v Culverwell (VO) and Leicester City Council* [1976] RA 141. This Lands Tribunal judgment 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 weighed.

22. I was presented with the leases of the two properties units 2 and 3 now combined to make one restaurant unit with a total current rent of £99,500.

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

24. In this case, the rent for Unit 2 was reviewed on 9 July 2016 but remained at £37,500 per annum and so had not increased since the original lease was signed in May 2003. This review date was sufficiently close to the AVD of 1 April 2015 to be of use to me in respect of the property's valuation but I attached less weight to it than I would have done had it been a new rent agreement tested on an open market. The appellant had contended that the reason for no rent increase since 2003 was that the rent was above the market rate in 2003 and had remained so until 2016.

25. I do not think that that is an unreasonable contention, however, it is not borne out by the rental agreements for Unit 3. The rent on this unit had increased after a rent review of 27 July 2015 from £40,000 to £62,000 per annum. Again that review was not a fully tested market rent and therefore not as indicative as it could have been but it is closer to the AVD and therefore of more significance than the rent for Unit 2. When combined with Unit 2 this gives an overall rent increase for the property from £77,500 to £99,500 and I was therefore able to attach significant weight to this evidence.

26. I found that the appellant's proposed current assessment of the appeal property at £71,750 to not be a reflection of the full value of the appeal property as it was less than the total property rents at a total of £77,500 in 2005 and 2010 but with no evidence that rental values in the locality had decreased since those years. Indeed, it was clear that rents in the locality had increased and were substantially more than for the appeal property.

27. The previous end allowances in the valuation by the valuation officer indicate that the appeal property warranted some considerations in respect of its shape, quality and size. These previously amounted to a total of 42% indicating a number of factors that were likely to negatively affect its market value. I appreciate the valuation officer's desire to value the property without any historical end allowances and I have taken this into consideration in respect of my complete assessment of the entire property.

28. I was also presented with properties comparable to the appeal property in its locality. The current analysed rent of the property was 182m$^2$ and was already one of the lowest in the area:

| Address | Analysed Rent per m$^2$ |
|---|---|
| 9 New Fetter Lane | £366.24 |

| | |
|---|---|
| Northcliffe House, 26-28 Tudor Street | £400.27 |
| Fleet House, 8-12 New Bridge Street | £253.55 |
| Gardeners Lane, High Timber Street | £359.53 |
| 7 Great New Street | £462.72 |
| 1 Plough Place | £325.33 |
| 54 Farringdon Street | £269.91 |
| 19 & 20 Swithins Lane | £464.52 |
| 13 Well Court | £533.09 |

29. I found that it was reasonable to value the basement and lower ground floor at 50% of the analysed rent value at £91m$^2$ because the area had very little natural light, the bar area part has no windows and this type of valuation is applied to similar areas in similar properties in the locality.

30. The basement area at the analysed rent of £91m$^2$ gave a rateable value of £21,199 which was well below the unchanged lease agreement of £37,500 from 2003. If an end allowance of 15% was allowed on this area that would reduce it to storage value which I found would be unrealistic and not a reflection of its actual use. For this reason I found that there was no need to factor in any end allowance as it was clearly not appropriate given the above evidence.

31. In appeals of this nature the burden of proof rests on the appellant to prove his case. I concluded that the appellant's representative had failed to produce sufficient evidence to justify a claim for a further reduction but that there was evidence that the current value of the appeal property is not reflected in its rateable value assessment.

32. I was therefore satisfied that the correct rateable value should be £85,000.

**Order**

33. The appeal was allowed in part. The Tribunal orders, pursuant to Regulation 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009, S.I. No. 2269 2009, that the Valuation Officer, within two weeks of the date of this order, shall alter the 2017 list in respect of Vivat Bacchus Ltd, 47 Farringdon Street, London EC4A 4LL to £85,000 with effect from 1 April 2017.

34. 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:** 28 July 2021

**Appeal number:** CHG100093721