THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; Wine bar; Basement trading; Unadjusted base rate; Appeal allowed in part.

RE: Bst & Gnd Floors, 62 Carter Lane, London EC4V 5EA

APPEAL NUMBER: CHG100105103

BETWEEN: Swizzlestick Ltd (represented by De Villiers Commercial Property Surveyors) — Appellant

And

Andrew Ricketts (Valuation Officer) — Respondent

PANEL: Ms N E Talbot-Hadley (Senior Member)

CLERK: Ms S Hodgson

ON: 15 April 2021

APPEARANCES: Mr M Short of De Villiers Commercial Property Surveyors for the appellant
Ms S Bisla of the Valuation Office Agency for the respondent

REMOTE HEARING

Summary of decision

1. Appeal allowed in part. The rateable value (RV) is reduced to £75,000 with effect from 1 April 2017.

Introduction

2. This was a 2017 rating list appeal. The RV of the appeal hereditament was £82,500 with effect from 1 April 2017. This was a compiled list appeal, so the material day was also 1 April 2017.

The challenge stage was completed on 9 December 2020. The challenge sought a reduction in RV to £72,500.

3. The appeal hereditament was a wine bar located in the St Paul's area of London. It comprised of basement and ground floor space, with the majority at the basement level. The wine bar operated from the basement with a small bar on the ground floor. The total area was $301m^2$.

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. 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.

7. 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.

8. 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 evidence, should not be construed as it having been overlooked.

Issue

9. The issue I had to consider was the correct RV to be ascribed to the subject hereditament.

Evidence and submissions

10. Mr Short 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 Short declared that he was instructed on a contingency fee basis.

11. Mr Short 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.

12. Ms Bisla appeared on behalf of the respondent as both advocate and expert witness. Ms Bisla was not instructed under any conditional fee arrangement.

13. 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).

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

15. Mr Short referred to rental evidence from the subject property with leases agreed in 2008, 2013 and 2018. He argued that the wine bar predominantly traded from the basement which measured 211.90m^2 compared to the ground floor at 44.50m^2. Mr Short provided evidence of a number of restaurants and wine bars in the area to show the range of base rates that were being used. He contended that the assessment evidence shows most of the comparable properties were valued at a base rate of £450 per square metre (psm) which is what he was asking me to reduce the subject hereditament to.

16. Ms Bisla provided rental evidence from three restaurants in the area that had leases agreed in 2008, 2010 and 2014. She had provided a calculation where she had calculated the growth between the subject rents and applied this average percentage to her comparable evidence to give a 2015 rental figure. Ms Bisla argued that the RV should not be the same or less than the RV in the 2010 list and asked me to confirm the current RV in the list as £82,500.

Decision and reasons

17. Schedule 6 to the Local Government Finance Act 1988 as amended by the Rating (Valuation) Act 1999, provides that:

> *2(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.*

18. In respect of an appeal against an entry in the 20017 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).

19. 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.

20. Both parties had referred to the leading judgment of *Lotus & Delta Ltd v Culverwell (Valuation Officer) and Leicester City Council* [1976] RA 14. This judgment set out six concepts to be followed when considering the weighting of evidence:

    1. Where the hereditament which is the subject of consideration is actually let that rent should be taken as the starting point.
    2. 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 s.19(6) of the General Rate Act 1967 the more weight should be attached to it.
    3. 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.
    4. 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 properly be referred to as giving an indication of that opinion.
    5. In light of all the evidence an opinion can then be formed of 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.
    6. In those cases where there are no rents available of comparable properties a review of other assessments may be helpful but, in such circumstances, it would be clearly more difficult to reject the evidence of the actual rent.

21. The subject hereditament was let on a 25-year lease with effect from 18 January 2008 with 5 yearly rent reviews. The passing rent at the start of the lease and at the rent reviews was as follows:

    - January 2008 - £70,000 – new lease with 9 months' rent free
    - January 2013 - £70,000 – rent review
    - January 2018 – Year 1 £75,000, Years 2-5 £82,500 – rent review

Mr Short had devalued the 2013 rent to £433psm and the 2018 rent to £501psm and contended that as the rents are either side of the AVD, the rental value at AVD would fall between these values.

22. I considered the comparable assessment evidence put forward by Mr Short. He had supplied a list of 12 restaurants in the locality and 13 wine bars in the locality. He had devalued all of the evidence and the wine bars ranged from £175psm to £625psm. There were more similarities between the restaurant values, with the majority devaluing between £427psm and £462psm.

23. It was my opinion that the restaurant evidence provided was not truly comparable as the subject property was a wine bar trading from the basement level. The values of the wine bar assessment evidence provided was too varied for me to place much weight on it when valuing the subject property.

24. Ms Bisla had provided 3 comparable properties and analysed these using her own calculation that devalued the rents as follows:
    - Ryans Bar, 56 Carter Lane £613psm
    - 55 Carter Lane £544psm
    - Bst & Gnd F 9 Ludgate Broadway £498psm

25. The calculation used was to take the 2013 rent of the subject property which had been devalued to £433psm and the 2018 rent of the subject property which had been devalued to £501psm and then calculate the rate of growth. The rate of growth was calculated at 3.14% year. Ms Bisla then did the same calculation to get the rate of growth between the 2008 rent and the 2018 rent, which she calculated at 2.85% per year. Ms Bisla then applied the average growth rate of 3% per year to the rents of her comparable evidence to arrive at the above figures that she contended would have been the values at the AVD in 2015.

26. In addition to the 3% growth, Ms Bisla added an extra 5% to Ludgate Broadway due to its location. I noted that the original rent on 56 Carter Lane and 55 Carter Lane were effective from July 2010 and March 2008 respectively. It is my view that these rents are too far removed from the AVD to be helpful in the appeal before me. I am aware that Ms Bisla has calculated the rent for the properties at the AVD, however I am not persuaded by this argument as there is an assumption of growth where the rent review of the subject property in 2013 indicated this was incorrect. I found that the comparable rental evidence provided by Ms Bisla was speculative and too many adjustments were required to meet the rating hypothesis. For this reason, I place little weight on the comparable properties provided by the respondent.

27. Based on the evidence before me and the leading judgement of *Lotus and Delta [1976]* I have placed the most evidence on the rent of the subject property. I am more persuaded by the appellant's argument that the rent at the AVD would sit between the two rent reviews from 2013 and 2018.

28. I acknowledged that the RV may not increase between the 2010 rating list and the 2017 rating list, however I am aware that it is not a requirement in legislation for this to happen, and in fact

some rateable values decrease between rating lists. The rateable value is determined by the economic situation at the AVD and in this appeal I have found that the evidence supported a reduction in RV to £75,000, based on an unadjusted base rate of £466psm. This resulted in the following revised calculation:

Floor	**Description**	**Area (m^2)**	**Rate psm**	**Value**
Basement	Restaurant	211.90	233.00	£49,373
Basement	Internal Storage	44.81	116.50	£5,220
Ground	Bar Area	44.50	466.00	£20,737
Total		301.21		£75,330
			RV say	£75,000
			Effective from	1 April 2017

29. Therefore, the appeal is allowed in part.

Order

30. The Tribunal orders, pursuant to Regulation 38 of the Valuation Tribunal for England (Council Tax and Rating Appeals) (England) Regulations 2009 [SI 2009 No 2269] that the respondent shall alter the 2017 list in respect of Bst & Gnd Floors, 62 Carter Lane, London EC4V 5EA within two weeks, to £75,000 after rounding with effect from 1 April 2017.

31. If the appeal was successful (either in part or full) 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: 11 May 2021

Appeal number: CHG100105103