VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; challenge against compiled List entry; shop and premises; accuracy of rateable value; Lotus and Delta v Culverwell (VO) & Leicester City Council [1976] RA 141; Select Service Partner Ltd v Mr R Roberts (VO) VTE 2019; appeal dismissed.

RE: M & S Simply Food, Central Station, Newcastle Upon Tyne NE1 5DG

APPEAL NUMBER: CHG100106760

BETWEEN:	Select Service Partner Ltd	Appellant
	and	
	Mr R Roberts (Valuation Officer)	Respondent

PANEL: Miss U Haque (Senior Member)
Ms J Morton

CLERK: Miss F Willson

REMOTE HEARING ON: 8 March 2021

APPEARANCES: Mr J Massey of Tanner Rose (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 confirmed as M & S Simply Food, Central Station, Newcastle Upon Tyne NE1 5DG with a rateable value (RV) of £108,000 from 1 April 2017.

Introduction

2. The appeal arises from a challenge made by the appellant's representative on 26 June 2019, in respect of M & S Simply Food, Central Station, Newcastle Upon Tyne NE1 5DG (the appeal property). The challenge was in respect of the entry in the rating list at £148,000 RV effective from 1 April 2017 which was reduced to £108,000 at the Challenge stage. The appellant sought a revised assessment of £80,000 RV with effect from 1 April 2017. After considering the merits of the challenge, the Valuation Officer determined that RV should be reduced to £108,000 and a decision notice to this effect was issued on 14 February 2020. The appellant made an appeal to this tribunal against the RV in the decision notice, which was received on 9 June 2020, on the grounds that the existing RV was not reasonable.

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 Massey 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 Massey stated that he was instructed under a conditional fee arrangement. 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 his client's case

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6. The panel have accepted this expert witness evidence on the above basis as the appeal is not complex and to do otherwise would be contrary to regulation 3 (Discharge of VTE functions – general) of the Procedure regulations and is 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.

7. The appeal property is a shop and premises located in Newcastle Railway Station. It was formerly a public house but now operates as a Marks & Spencers food store. The property is located in the entrance of the station and can be accessed either from the street or from the station concourse. The appeal property is located next to Burger King and WH Smith in the entrance to the station. It is held on a nine year lease commencing on 5 May 2015 with a passing rent of £52,000 increasing to £80,000 from 5 May 2016.

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

Issue

9. The issue between the parties is the correct RV of the appeal property. The current entry in the list is £108,000 based on comparable properties. Mr Massey believes the RV should be £80,000 based on the rent passing on the appeal property.

Evidence and submissions

10. Mr Massey submitted a bundle of evidence which included details of the appeal property, relevant case law and the issues in dispute and photographs.

11. With reference to the appeal property he asked the panel to confirm a revised rateable value of £80,000 from 1 April 2017.

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

13. In consideration of his comparable properties admitted in evidence, Mr Fuller asked the tribunal to confirm the RV of £108,000 with effect from 1 April 2017.

Decision and reasons

14. 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 to 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 1 April 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, paragraph 2(7) of the Act, in relation to both the physical nature of the property and its mode or category of use.

15. Mr Fuller and Mr Massey referred the panel to the case *of Lotus & Delta v Culverwell (VO) and Leicester City Council* [1976] RA141. In this case it was determined that 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*.

    - 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.

16. Mr Massey submitted that in the case of *Lotus and Delta v Culverwell (VO) & Leicester City Council [1976]* the rent on the appeal property was found to be the starting point for calculating the RV on an assessment. The rent on the appeal property passing at the AVD was £80,000 and he therefore asked the panel to set the RV at £80,000. He drew the panel's attention to the case of *Select Service Partner Ltd v Mr R Roberts (VO)* where the panel confirmed the RV for Burger King at £112,500 which was the same as the rent passing at the AVD.

17. The panel was aware that a case heard by another Tribunal panel was not binding on it. Each case must be determined on its own merits but it would be given weight when determining the outcome of this hearing.

18. He argued that there was no tone established for the properties in the station. In that case each unit should be valued individually as a unique assessment. In the case of the appeal property, he argued, that would be £80,000 in line with the rent passing at the AVD. He referred the panel to other properties occupied by the appellant elsewhere in the country where the passing rent had been used to determine the RV for those properties.

19. Mr Fuller drew the panel's attention to the fact that under the findings of the court in the case of *Lotus and Delta* the rent passing on the appeal property was only the starting point when assessing the RV of a property. He referred the panel to paragraph 24 of *Select Partners Ltd v Mr R Roberts* in which the other two units to the Burger King at the station were used as comparable properties:

    "Based on the two rents, both of which were from the same parade, the panel found Mr Massey's argument for a reduction to £730/m^2 to be persuasive."

    He argued that the rents on the other units in the station had been held to be relevant by the panel in that Tribunal as showing an established tone for the properties especially as they were all at the same location.

20. The three units on the station concourse were of a very similar size and the appeal property had the lowest in terms of main space price The Burger King was the subject of the previous *Select Partners Ltd* case and WH Smith assessment had not been challenged with a Check or Challenge application:

Address	Size (ITMS)	Main space rate (per m^2)
M & S Simply Food	$148m^2$	£540
WH Smith	$135m^2$	£851
Burger King	$154m^2$	£730

21. The panel was aware that the *Lotus and Delta* case found that after the rent on the appeal property it was important to take into account the whole basket of evidence when assessing an RV and not just the passing rent on the appeal property. Based on the other three units, one of which had been the subject of a VTE decision, the panel found that the main space rate (ITMS) of £540/m^2 on the appeal property was not unreasonable

22. In Mr Fuller's opinion, the fact that the appeal property had entrances both from the street and from the concourse of the station gave the unit an advantage over the other properties in the station. Customers had more visibility of the shop and used it to gain entrance to the station whilst shopping for any items they may want. This he argued would add value to the assessment as opposed to both the other two shops.

23. The panel found that having access from both the street and the station concourse would increase the value of the unit when compared to the other two units on the station concourse. This, it believed, would distinguish it from the *Select Partners Ltd v Mr R Roberts* case in respect of the main space rate as the Burger King did not have the benefit of a dual access and so would have a different ITMS.

24. In referring the panel to the change in RV from £148,000 to £108,000 which had taken place at the Challenge stage Mr Fuller explained that this was as a result of the *Select Partners Ltd v Mr R Roberts* case. The case had led to a reduction to the main space rate from £1,000/m^2 to £730/m^2. The outcome of the case relating to the Burger King unit in the same location had, therefore, already been applied to the RV of the appeal property.

25. The panel found that the decision in the case *Select Partners Ltd v Mr R Roberts* had already been taken into account and the RV reduced as a result.

26. Mr Fuller drew the panels attention to the fact that the lease on the appeal property commenced at a time when the appeal property was a public house and not a shop. He argued that the reason why the rent was set at £52,000 for the first year and then increased to £80,000 per annum was to take into account the fact that the unit was still laid out as a pub at the start of the lease. The rent was not, therefore, an open market letting as it was a public house being rented out for use as a shop. This, he argued, would have impacted on the rent agreed between landlord and tenant. It would also mean that the tenancy was not the same as the hypothetical tenancy for rating.

27. The panel gave weight to the fact that the tenancy, and therefore the rent, was not a true open market rent. They could therefore only put limited weight on the passing rent on the appeal property when determining the RV.

28. Having considered both parties' evidence and analysis, the panel concluded that the main space rate of £540/m^2 was not excessive. The panel held that the existing assessment was reasonable, and the RV was confirmed at £108,000 from 1 April 2017.

29. 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 not done so.

30. The appeal is therefore dismissed.

Date: 6 April 2021

Appeal number: CHG100106760