THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating appeal; 2017 rating list; accuracy of the rateable value in the list as at 1 April 2017; club and premises; rental evidence; comparable assessments; usable areas; appeal dismissed.

RE: Sub-Basement, Basement Part and Ground Floor Part, Clareville House, 47 Whitcomb Street, London WC2H 7DH

APPEAL NUMBER: CHG100111082

BETWEEN:	TDC Ents Ltd	Appellant
	and	
	Mr A Corkish (Valuation Officer)	Respondent

PANEL: Mr R White (Senior Member)
Mrs F Higgin

CLERK: Mrs H Beresford

REMOTE HEARING ON: 13 May 2021

APPEARANCES: Mr P Tribe of Conneely Tribe (Appellant's representative)
Mr C Cates (for the Valuation Officer)

Summary of decision

1. The appeal was dismissed, the assessment was confirmed at rateable value (RV) £410,000 with effect from 1 April 2017.

Introduction

2. This appeal has been brought in respect of the following: Sub-Basement, Basement Part and Ground Floor Part, Clareville House, 47 Whitcomb Street, London WC2H 7DH (the 'appeal property'), which was entered in the 2017 rating list as 'club and premises' at RV £422,500, effective from 1 April 2017.

3. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, Conneely Tribe made an appeal to the Valuation Tribunal for England (VTE) on behalf of TDC Ents Ltd. The appeal was made against the Valuation Officer's challenge decision to alter the 2017 rating list entry to £410,000 RV. The appellant sought a reduction to RV £302,500 with effect from 1 April 2017.

4. The appeal to the VTE was made on the grounds that the valuation for the appeal property was not reasonable, as the Valuation Officer had not made an appropriate alteration to the rating list in his challenge decision notice.

5. The appeal property is a basement club and premises with a small ground floor lobby and display windows. It has sui generis planning permission and is used as a live music venue. It is located on Whitcomb Street with a small return frontage to Whitcomb Court. It is located to the west of Leicester Square and is visible from Swiss Court which is to the north. Piccadilly underground station is located to the north west and Leicester Square underground station is located 300m to the north east.

6. The appellant's representative, Mr Tribe, when appearing as expert witness, stated that he was on a conditional fee arrangement. However, he also stated that he understood and accepted that his first duty was to the VTE in giving his evidence, whether or not the evidence supported his client's case.

7. The panel has 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 Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) Regulations 2009 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).

8. It was therefore appropriate for the panel hearing the evidence to consider the 'expert' evidence and assess what weight, if any, to give it in the context of the matters in issue before it.

9. The President of the 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. 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 when 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

12. The base level of value adopted for the appeal property was not agreed. The Valuation Officer has adopted £625/m^2 in respect of the appeal property, but the appellant sought a reduction to £500/m^2, 5% had been added for air-conditioning. The parties had agreed that designated fire areas should be excluded but disagreed on whether the areas described as 'circulation corridors' should be included.
    There were two issues for the panel to determine:
    - the appropriate rateable value for the property; and
    - the usable areas.

Evidence and submissions

13. The 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.

14. The panel was grateful for the assistance provided by Mr Tribe and Mr Cates during the hearing of this case.

15. Mr Tribe was seeking a rateable value of £302,500 against a revised assessed value of £410,000 proposed by the Valuation Officer.
16. Mr Tribe argued that the rental approach should be adopted since it reflected the value that the landlord and tenant placed on the property in an arm's length, third party transaction. Another reason for adopting this approach was that the area of the property, at around 850m^2, was substantially larger than most clubs which, when taken with the variability of the club offerings, meant that the use of the values of other clubs which he did not consider to be comparable was not considered a reliable guide as to the value of the appeal property.

17. Since the actual rent was not in accordance with the statutory rental hypothesis it had to be adjusted and then further adjusted to arrive at an antecedent valuation date (AVD) rent. To support the reasonableness of this adjusted rent figure Mr Tribe used the rent on the basement property in the same building, a restaurant, agreed in March 2017 and the rateable value determined at AVD to confirm the rent adjustment from 2017 to 2015.

18. Mr Cates contended that use of a rent so long after the AVD should not be given any weight. Reference was made to the Lands Tribunal case of *Special Eyes v Felgate* (VO) RA 387 1992 concerning the weight to be attached to post AVD rents. He also considered that Mr Tribe's AVD adjustment of 17.5% was conjecture unsupported by evidence of the movement in club rents in this period and that the claimed confirmation by the 17% restaurant percentage was simply invalid and misleading. He also questioned the adjustment of the rent to reflect the rent-free period and the half rent for a year.

19. To confirm the reasonableness of the rateable value calculated by this method, Mr Tribe maintained that the rateable values of the property calculated as a restaurant at a rate of £475/m^2, and as a club at a rate of £500/m^2, showed that the value was realistic. The restaurant rate of £475/m^2 was based on the basement restaurant rate of £400/m^2 elevated to reflect the property's late night licence. The reasoning for using a restaurant rate was that the subject property's use as a bar, restaurant and live music venue was comparable to that of a restaurant. The basis for adopting a £75 uplift as opposed to any other figure was unclear. The club rate of £500/m^2 seemed to the panel to be based on valuer judgment.

20. Mr Cates argued that the property was clearly not a restaurant so any value computed on that basis could only have relevance to a property that was a restaurant, he argued that it told the panel nothing about club value. The adopted club rate of £500/m^2 was unsupported by any other evidence.

21. The Valuation Officer's representative Mr Cates was seeking a rateable value of £410,000. This is based on a rate of £625/m^2 plus 5% for air conditioning i.e. £656.25/m^2.

22. Mr Cates argued that no weight could be given to the rent on the property since it was so long after the AVD of 1 April 2015. He contended that under these circumstances the rents, settlements and assessments of comparable properties should be used as an indication of value. Mr Cates presented five key club rents and rateable values that are within close proximity to the appeal property. On an in terms of main space (ITMS) basis the rents analysed ranged from £552/m^2 to £879/m^2, with an average value of £713/m^2. Settled and assessment evidence was also presented. Mr Cates considered that this comprehensive evidence supported the Valuation Officer's rate of £625/m^2 plus 5% for air conditioning. Value is determined by size, location and other physical factors. Mr Cates observed that the rate of £625/m^2 was towards the lower end of the value range.

23. Since Mr Cates placed the highest weight on the five key rental comparable properties, Mr Tribe challenged their comparability to the appeal property. He argued that the appeal property was around 850m^2 whilst most of the comparable properties were only around a sixth of this size, the largest was 166.8m^2 many being towards 100m^2. None of the comparable properties were located at sub-basement level, they were at ground or basement level.

24. In terms of the settled assessments to which weight was attached by Mr Cates, Mr Tribe commented that these were larger but still not of the size of the appeal property. They were situated in main thoroughfares unlike the appeal property. One had a nudity licence that added significant value. Again, they were on ground and/or basement levels.

25. The assessment evidence to which less weight was attached by Mr Cates was considered to support the rate of £625/m^2.

Decision and reasons

26. The panel had to determine the rateable value for the appeal property, which represented a rent that a hypothetical landlord and tenant would agree, as at the AVD,1 April 2015. The common date was used to ensure that every property was treated in a consistent way.

27. 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;

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."

28. The Lands Tribunal judgment in *Lotus and Delta v Culverwell (VO) and Leicester City Council* [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.

29. In the rating list the subject property is described as club and premises and its authorised use under the lease is as a bar, restaurant and live music venue under the sui generis planning class. The panel found that its value must be determined in accordance with this mode or category of use. The parties had approached the valuation in two ways. Mr Tribe relied on the rent passing on the property as the best guide to its value whilst Mr Cates adopted a value by reference to comparable clubs in the locality.

30. It appeared to the panel that the parties seemed to agree that each club was unique and individual in terms of its offerings and features. All clubs in Central London came under Valuation Scheme 421872 with values ranging from £150 to £1,250, a substantial range that may reflect the diversity of club offerings and features. For this reason, the panel could understand why the preference would be to value a club on the basis of its rent, if possible.

31. In applying the *Lotus & Delta* principles the panel found that there was a market rent. The circumstances of the rent were not close to the statutory requirements being thirty-one months after the AVD with a rent-free period as well as a period at a reduced rent. There were rents of other clubs in the locality, the question being how similar they were to the appeal property. There were also settlements and assessments of other clubs, again the question was how similar they were to the appeal property.

32. Since the actual rent did not fulfil the statutory requirements, Mr Tribe had sought to adjust the rent onto a statutory basis.

Actual rent 20 November 2017	£375,000	
Average rent adjusted for rent-free and reduced rent	£356,250	
Effective rate	£589	
17.5% adjustment to AVD	£293,906	
Proposed rateable value		£302,500
Proposed rate/m^2		£500.

33. The starting point for this adjustment was the actual rent, which had been agreed in an economic period thirty-one months after the AVD. It clearly would not reflect the rent that would have been agreed at the AVD and the basis for each and every adjustment would have to be established rigorously with supporting evidence.

34. There were uncertainties concerning the adjustment for the rent-free and reduced rent periods, but the reduction only amounted to 5%. The AVD adjustment of 17.5% was much more significant. The panel found that this was not supported by any evidence concerning the movement of the value of club premises in the area. Whilst Mr Tribe claimed that the evidence of the basement restaurant supported this 17.5% rate, it related to only one restaurant albeit in the same building and the panel was not persuaded that it could be relied upon.

35. The panel noted that Mr Tribe's 2017 adjusted rent for the appeal property at £587.39/m^2 only exceeded one of the 2015 AVD rental comparable properties 8-12 Broadwick Street which seemed surprising if the club market had been rising at a rate of 17.5% as asserted. The panel was of the view that it could indicate that the rent is not a market rent as suggested by Mr Cates, or, that it is just an unusually low rent but there was no evidence to support either possibility.

36. Having examined the submitted schedules the panel found that the proposed rate for the club of £500/m^2 was almost the lowest rate for all the clubs with the club at 61 Poland Street having the same rate and the Villiers Street club having a lower value at £400/m^2. Given the appeal property's location and size this £500/m^2 rate seemed unlikely particularly given the rates applicable to other clubs in the immediate vicinity.

37. The panel was not persuaded that verifying the rateable value by reference to restaurant value was meaningful especially in the absence of any evidence demonstrating the relationship of restaurant values to club values. The justification for the adopted restaurant rate of £475/m^2 seemed questionable and the actual figure somewhat arbitrary.

38. The panel considered the case made out by Mr Cates and the challenges made by Mr Tribe. The evidence supporting the rate of £625/m^2 comprised rental, settlement and assessment evidence of clubs in central London including those in close proximity to the appeal property.

39. Mr Tribe questioned the comparability of these clubs to the appeal club. It was the only club located at sub-basement level. Its' floor area was substantially greater than most of the other clubs. There appeared to be no reduction in value despite other premises such as restaurants having their values reduced below ground floor level. From the evidence provided the panel determined that it did not appear that there were any other clubs at sub-basement level or clubs similar in size. Mr Cates argued that a club was not disadvantaged by being at basement or sub-basement level in fact it might be an advantage and that there would not be a value effect. The panel found that whilst this may be true there was no evidence that established this assertion as fact. There was some evidence to suggest that basements were assessed at a lower rate but not a significantly lower rate.

40. The panel found that Mr Tribe was correct in saying that the largest rental comparable was only 166.8m compared to 850m for the appeal property and that one club was assessed at £577.50/m^2 i.e. below the £625/m^2 rate for the appeal property. Of the two settled assessments one had an area of 653.16m and the other an area of 322.68m. The larger property being 'Stringfellows' that had a nudity licence which would increase its value. Of the other assessments only two exceed 850m^2, one being Villiers Street valued at £400/m^2, but it was agreed that it was outside the main club area.

41. The panel questioned Mr Cates about the factors used in determining value and the comparability of clubs. The properties were similar in that they were clubs but appeared somewhat different in terms of their offerings and number of customers. Most were relatively

small compared to the appeal property with only a few being of a substantial size. The clubs used as rental comparable properties were clearly not comparable in terms of size but were located in its vicinity. Mr Cates said that value would also be affected by the quality of the fittings and ambience, the dining experience and standard of any entertainment. The panel was offered no evidence that the comparable clubs were similar or equivalent to that of the appeal club. The panel could understand why Mr Tribe considered that the comparable properties were not similar and a basis for determining rateable value.

42. Reviewing the evidence for the clubs did not reveal to the panel any obvious correlation between size and value. The panel was satisfied that looking at the basket of club values and taking into account the fact that the adopted rate of £625/m^2 was at the lower end of the club value range, the value was reasonable given the evidence overall.

43. With respect to the assessment of usable areas, the panel noted that the RICS Code of Measuring Practice sets out the areas that are to be excluded for determining useable area for Net Internal Area. The issue for the panel was the application of, "Permanent circulation areas, corridors and thresholds/recesses associated with access, but not those parts that are usable areas". The parties could not agree as to what constituted "parts that are usable areas". Mr Tribe had provided a plan highlighting the circulations with different areas being highlighted in different colours. The parties had agreed that designated fire areas should be excluded, the question was whether the other areas described as a circulation corridor really served just the needs of the occupier and should be included.

44. The panel found that the areas were not between structural walls but were between what were described as permanent internal walls that it was said could be viewed as equivalent to corridors between structural walls. It seemed that the circulation areas were not essential and permanent for any tenant that might occupy the property but only to the current occupant so should be included.

45. The panel found that in cases of this nature the burden of proof is on the appellant to satisfy the Tribunal that the appeal should be allowed. In this case the panel was not persuaded by the evidence and arguments put forward by the appellant's representative that a reduction in the assessment to RV £302,500 was warranted. Therefore, the appeal was dismissed.

Date: 28 May 2021

Appeal number: CHG100111082