THE VALUATION TRIBUNAL FOR ENGLAND

Non-domestic rating; 2017 Rating List appeal; hotel and premises; Lotus and Delta v Culverwell (VO) and Leicester City Council [1976] RA 141; Futures (London) Ltd v Stratford (VO) [2006] RA 75; comparable evidence; fair maintainable trade; appeal dismissed.

RE: The Brent Hotel, 165 Preston Hill, Kenton, Harrow, Middlesex HA3 9UY

APPEAL NUMBER: CHG100131065

BETWEEN:	Mr A Patel	Appellant
	and	
	Ms D Bunyan (Listing Officer)	Respondent

BEFORE: Mrs A Fielder (Senior member sitting alone)

CLERK: Mr R Gath IRRV (Hons)

REMOTE HEARING 1 on 1 February 2022

APPEARANCES: Mr A Patel (Appellant)
Mr A Bacon (Appellant's representative)
Mrs D Thorne (Valuation Officer's representative)

Summary of decision

1. Appeal dismissed. The appeal property's assessment was to remain unaltered at £31,000 rateable value (RV), with effect from 1 April 2017.

Introduction

2. 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.

3. 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 practice.

4. In accordance with that Practice Statement, I conducted the hearing of this appeal remotely via Microsoft Teams conference call using audio/video-link.

5. This is a 2017 rating list appeal. The Brent Hotel, Preston Hill, Kenton, Harrow, Middlesex HA3 9UY (the 'appeal property'), had been entered into the rating list as 'hotel and premises' at RV £54,000. However, following the challenge the VOA subsequently decided to reduce the appeal property to RV £31,000 effective from 1 April 2017 based on Double Bed Units (DBU) of £2,400. Mrs Thorne confirmed that the rating list has been updated to reflect the revised RV.

6. In accordance with regulation 13A of the Non-Domestic Rating (Alteration of Lists and Appeals) (England) Regulations 2009, Mr Patel 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. The appeal to this Tribunal was made on 27 June 2021 following the Valuation Officer's Decision Notice of 25 March 2021 in respect of the appeal property.

8. As Mr Bacon appeared on behalf of the appellant as both advocate and 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. Mr Bacon declared that he was not instructed under any conditional fee arrangement. Mr Bacon confirmed 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.

10. The expert witness evidence was accepted 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).

11. It was therefore appropriate for me 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.

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

12. The absence in this decision of a reference to any statement or item of evidence placed before it by the parties should not be construed as it being overlooked by me.

Issue

13. The issue in dispute was whether the RV for the appeal property determined by the VO was reasonable. In particular, the appellant disputed the DBU that the VOA had determined.

Evidence and submissions

14. The appellant had provided the Tribunal with both parties' written submissions. The evidence included the following: the appellant's statement of case; a copy of the VO's rating manual for hotels; the trading and profit and loss account for Brent X Hotel for year ended February 2013, August 2014; the trading and profit and loss account for ARMA Hotels Limited for year ended November 2016, for the period December 2016 to 31 May 2017 and Profit and Loss account for the year ended 31 May 2018 and 31 May 2019; a letter dated 15 November 2018 from RNS accountants stating that effective from 16 April 2018 Arma Hotels had deregistered for VAT and that due to the location and lack of footfall the appeal property was not a viable business model; a map of the locality; external photographs and a layout plan of the appeal property; newspaper articles about the prospects of hotels in the London area; websites showing information regarding other hotels and other accommodation; the proposed valuation, the current valuation; a copy of the challenge proposal; the Valuation Office Agency's (VOA) challenge decision notice; copies of correspondence that had passed between the parties; the Upper Tribunal judgment of *Arma Hotels Limited v Corkish (VO)* [2020] UKUT 0103 (LC) and transcript; the following decisions of this Tribunal: *Wymondham Abbey Project Ltd v Mr Sykes* appeal number CHG100053059, *Kent Hall Hotel and Kadimah Carmel Hotel Ltd v Mr Jackson (VO)* appeal numbers CHG100017228 and CHG100017691, C N Anwar v VO appeal number CHG100082530; extracts of a number of judgments such as *Garton v Hunter (VO) [1969] 2 QB 37; Turnbull (VO) v Goodwyn School and others [2016] UKUT 0068 (LC); Hughes (VO) v York Museums and Gallery Trust [2017] UKUT 0007 (LC); Dawkings (VO) v Ash Brothers and Heaton Ltd [1969] 2 AC 366* and *K Shoe Shops v Hardy (VO) and Westminster City Council* [1983] RA26 CA and a number of spreadsheets showing challenge summaries for comparable properties, and a substantial number of other hotel assessments.

15. The appeal property was owned by the appellant and there was no rental evidence in the locality. In this appeal Mr Patel sought a revised assessment of RV £10,500 RV, although on reflection and based on his professional judgement Mr Bacon was seeking £13,000 RV.

16. Mr Bacon had valued the appeal property in accordance with the 2017 Valuation of Hotels (Rating Manual Section 510). This valuation method operates in two stages. Firstly, an assessment of the fair maintainable trade (FMT) at the hotel is made. Secondly, a percentage is applied to the FMT to arrive at the RV (from a range of percentages listed in a table). An element of

professional judgement is applied at both stages in determining the respective figures to adopt. Mr Bacon had assessed the FMT to be £130,000 based on an average of the income being £141,000 for 2015, £125,000 for 2016 and £140,000 for 2017 derived from £72,000 for six months to May 2017. He then applied a percentage of 9.5% which was the mid-range of the scale which in his professional opinion reflected the disadvantages associated with the appeal property, resulting in the proposed RV of £13,000 (rounded down).

17. He argued that one could not rely on the accounts from the previous owner as they had gone into liquidation and therefore, he did not consider them to be a reasonable efficient operator, especially as there was nothing to state what the turnover consisted of, for example it could have been another hotel or income derived from restaurant facilities.

18. He also argued that the Upper Tribunal had determined that the RV for transitional certification purposes was £13,000 for the 2010 rating list. Therefore, for the RV to be £31,000, this represented an approximate increase of 240%, which he did not consider to be correct.

19. In consideration of the above, Mr Bacon asked the panel to confirm an RV of £13,000.

20. Mrs Thorne, on behalf of the VO, argued that they could not use the FMT as they required three years' accounts prior to the antecedent valuation date (AVD). As the appellant company had only been trading since November 2014, they were unable to reply on the FMT for the appellant company.

21. Mrs Thorne did suggest that to support his argument, Mr Bacon could have submitted the accounts for the company that previously owned the appeal property could be used

22. She also argued that in her opinion, in the absence of any reliable accounts, that she preferred to use the DBU. The VO had then valued the appeal property by reference to the Double Bed Unit of 12.94 to reflect the 14 lettable rooms. This was taken from the UT decision for the appeal property.

23. The VO had calculated the DBU to be £2,800 for hotels in Outer London which was derived from £3,800 per DBU which had been agreed for hotels in Inner London. She had then reduced the value by approximately 15% down to £2,400 for the appeal property and was lower than other hotels and guest houses in the locality, to reflect the disadvantages associated with the appeal property such as the lack of shops in the locality and the busy road.

24. In conclusion, Mrs Thorne could see no reason to deviate from this method of valuation and she was satisfied that the value of the DBU reflected the appeal property and she sought a dismissal of the appeal.

Decisions and Reasons

25. 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 AVD of 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.

26. Although Mr Patel had provided information regarding the fall in hotel trade, increase in hotel insolvencies in 2019 and crime reports from 2016 to 2019 and other information post 2017, as this was a compiled list appeal, the clerk gave advice to the Tribunal that I could only take into account physical factors as at the material day which was 1 April 2017. This was provided by the Non-Domestic Rating (Material Day for List Alterations) Regulations 1992 (SI 1992 No. 556) as amended. Both parties agreed with this advice.

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;
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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".

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 is considered to be the correct starting point but, where available, rents on similar properties are also to be taken into account. The assessments on other comparable properties may also be relevant. All of the evidence can then be weighted.

29. However, as there was no passing rent on either the appeal property or other comparable properties in the locality, I had to consider the merits of the parties' valuation approaches.

30. There was some discussion during proceedings on where the burden of proof lay. The Lands Tribunal's judgment in *Irving Brown and Daughter v Smith (VO)* [1996] RA 53 had addressed the question of on whom does the burden of proof lie. There were two aspects to the burden of proof, a factual burden

which was on both sides and the persuasive or legal burden of proof which rests solely with the appellant. In terms of the factual burden, a party asserting something must prove it, he asserts must prove. In order to meet the factual burden of proof each party should be able to explain how they have arrived at their valuation and be in a position to justify their proposed assessment. It would not be sufficient for the VO merely to put forward a valuation and invite the appellant to prove it was wrong. It was important for the appellant and the Tribunal, on appeal, to see how the valuation had been calculated. If that was not the case, the Valuation Officer could cite any figure he liked. In terms of the persuasive or legal burden, the onus was on the appellant to prove their case.

31. Firstly, I considered Mr Bacon's argument that the FMT should be used to determine the RV.

32. What I am required to do is determine what a hypothetical tenant, coming fresh to the scene, would place as a rental bid as at 1 April 2015, in order to receive a return from trading at the premises. Therefore, a potential tenant would want to view the previous years' accounts to determine that rental bid and Mrs Thorne had contended that without three years accounts, there was insufficient evidence to determine the RV by reference to the FMT.

33. Unfortunately, the appellant had only been trading since November 2014, which was four months before the AVD and was therefore unable to provide sufficient evidence to support his argument. However, the previous company's accounts (Brent X Hotel) showed a FMT of £200,000 a year, significantly more than the appellant. Mr Bacon had not considered these accounts to be reliable as it was not clear if the income was derived purely from the appeal property. Furthermore, as the appellant company had gone into liquidation, it further showed that it may not have been a reasonably efficient operator. The suggestion by Mrs Thorne was that Mr Patel with having a lower FMT may not have been a reasonably efficient operator.

34. Whilst Mr Bacon suggested using the FMT for later years and had provided the trading information, I concluded that by using accounts for years beyond the AVD was not the correct way to determine the RV. Whilst the accounts for the previous owner could be used, I had to apply little weight to those accounts as the FMT was higher than that enjoyed by Mr Patel. With Brent X Hotel being insolvent, whilst there may have been various reasons for this, it further added doubt that the FMT for the three years prior to the AVD was reliable enough to determine the RV. Although using the FMT of the previous company would result in a RV of £19,000 (£200,000 x 9.5% = £19,000).

35. Turning to the VO's assessment of the RV, Mr Bacon had suggested that the comparable method was not a method to calculate the RV. He also argued that a tone of the list had not been established for the 2017 rating list and referred to the judgment of *Futures (London) Ltd* v *Stratford (VO)* [2006] RA 75.

36. Mrs Thorne had provided a substantial list of comparable properties and had then identified properties where challenges had been agreed. She understood that no appeals had been submitted in respect of any of those challenges. Some challenges had been submitted by professional

representatives and, with the lack of appeals nearly five years into the rating list, Mrs Thorne suggested that a tone of the list had been established.

37. To assist me, I referred to the Court of Appeal judgment in *K Shoe Shops v Hardy (VO) and Westminster City Council.* In this judgment, the Court of Appeal held that when seeking to rely on evidence of tone, there were three stages of evolution. Firstly, a new list would carry little persuasive weight that a tone of values existed; little of its basis would have been tested. The second stage would have regard to settlement evidence and decisions of tribunals. Finally, a stage is reached when there are sufficient numbers of settlements, or lack of challenges against assessments to establish a pattern of reliable values. At that moment, the tone can be said to exist and it could be used as persuasive evidence in its own right.

38. That ratio was further considered in *Futures (London) Ltd v Stratford (VO)* where at paragraph 25, the Lands Tribunal member referred to the stages leading to the establishment of a 'tone of the list':

> "At first when a new rating list is put on deposit assessments will carry relatively little weight: they are opinions of value by the valuation officer as yet unchallenged and agreed or determined by a Valuation Tribunal or this Tribunal or accepted by lack of challenge. Finally, a stage will be reached when enough assessments have been agreed or determined or are unchallenged to establish a pattern of values, a tone of the list. The list is then said to have settled rents will be subsumed in to assessments. At this stage rating surveyors will have little regard to rents and pay considerable attention to assessments. The position at any time regarding tone of the list is a question of fact."

39. I found the judgment of *Futures (London) Ltd v Stratford (VO)* to be most helpful. Mr Bacon had argued that a tone of the list was not established until the end of the rating list. He argued that a tone of the list had not been established and suggested that it would not be until the end of the current rating list or even until 2025, given the changes to the appeals regulations for the 2017 rating appeals, although he accepted that it was down to the Tribunal to determine if a tone has been established.

40. The above judgment states "Finally, a stage will be reached when enough assessments have been agreed or determined or are unchallenged to establish a pattern of values, a tone of the list". We are now nearly five years into this rating list and whilst the Tribunal did not receive any appeals to begin with, this Tribunal have been determining 2017 rating appeals for three years.

41. Having considered both parties arguments, I am satisfied that there have been enough comparable assessments which have been agreed or determined or are unchallenged to establish a pattern of values. Given the above, I am satisfied with Mrs Thorne's argument that a tone of the list has been established for hotels in the locality.

42. It was clear that Mr Patel was unhappy because the RV had increased by 240% from the previous rating list. I note that there was a lack of rental evidence which is the best evidence to determine the RV.

43. However, I considered it important to stand back and look and compare the RV of the appeal property to a selection of Mrs Thorne's comparable properties:

Property	DBU	DBU value	RV
The Brent Hotel, 165 Preston Hill, Harrow (Appeal property)	12.94	£2,400	£31,000
Adelphi Hotel, 4 Forty Lane, Wembley	21.35	£3,800	£81,000
Arena Hotel, 6 Forty Lane, Wembley	9.35	£3,800	£35,500
Sudbury Hotel, Harrow Road, Wembley (Quoted in UT appeal)	9.6	£3,800	£36,250
Wembley Hotel, 38-42 London Road, Wembley	21.35	£3,800	£81,000
233 High Road, Harrow	2.4	£3,800	£9,100
6-8 Hindes Road, Harrow	20.3	£2,800	£52,500
Euro Hotel, 415-417 Pinner Road	11.8	£3,800	£44,740
Lindal Hotel, 2 Hindes Road	16.93	£3,800	£70,500
1 Elm Road, Wembley (Challenge made and withdrawn)	25.05	£3,800	£96,000
106 Craven Park (Agreed on challenge. No appeal submitted)		£2,800	£27,760

44. Mr Bacon was seeking a RV of £13,000. This was not much more than the RV for 233 High Road, Harrow which only had 2.4 DBUs and valued much higher. It clearly had much less accommodation and I could not see that RV should be close to the level of a much smaller property. Mr Patel had suggested that 233 High Road was a basic guest house and not a hotel. He also made various comments regarding these comparable properties, such as Sudbury, Adelphi and Arena Hotels being superior properties and in better locations.

45. At £2,400, the DBU and the resultant RV of £31,000 is less than Arena Hotel, and Sudbury Hotel, Harrow Road even though they had less DBUs. I also noted that Sudbury Hotel was quoted in the UT appeal and the judgment stated that the appeal property should sit below it. Euro Hotel, 415-417 Pinner Road had a similar DBU to that appeal property and the RV for this was £44,740. They all had DBU values at £3,800.

46. Having regard to the DBU value and the RV for these comparable properties and noting Mr Patel's comments in respect of these, I was satisfied with Mrs Thorne's explanation of how she had determined the RV as the value had reflected the appeal property being more of a basic lodge type property and the disabilities associated with the appeal property such as lack of off street parking and the poorer location.

47. Having applied little weight to Mr Bacon’s method to calculate the RV, and given the above comparable evidence, the RV of £31,000 appeared to be fair and reasonable for the appeal property and I dismissed the appeal.

Date: 14 February 2022

Appeal number: CHG100131065